

No. 11513

United States
Circuit Court of Appeals
For the Ninth Circuit.

PERCY JAMES CUTTING,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court
for the Territory of Alaska,
Fourth Division

FILED

FEB 13 1908

PAUL A. D'ENIEL

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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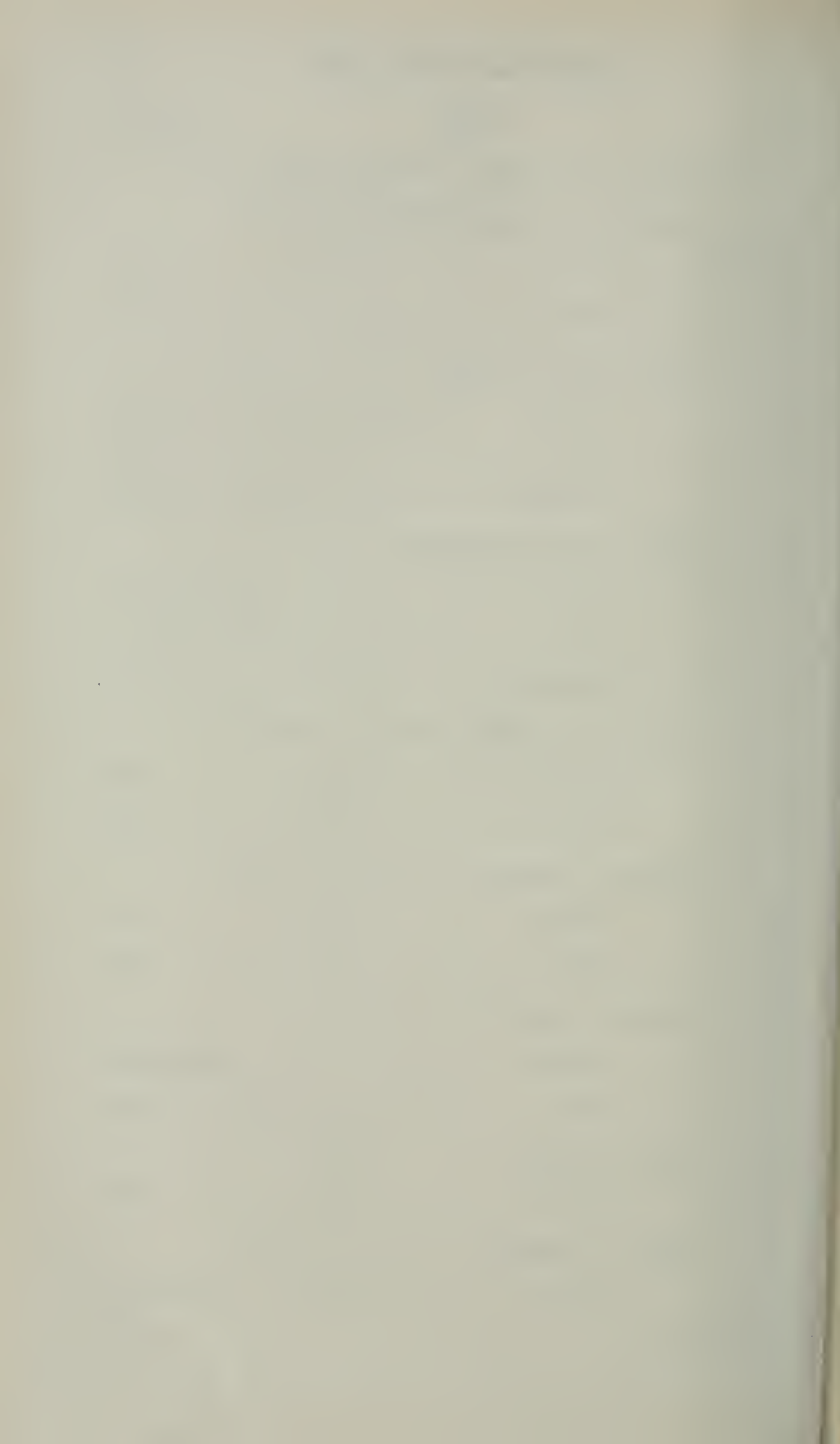
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ATTORNEYS OF RECORD

HARRY O. AREND,
United States Attorney,
Fairbanks, Alaska,
Attorney for Plaintiff and Appellee.

WARREN A. TAYLOR,
Fairbanks, Alaska,
Attorney for Defendant and Appellant.

In the District Court for the Territory of
Alaska, Fourth Judicial Division

Cr. No. 1268

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PERCY JAMES CUTTING,

Defendant.

INDICTMENT

Count I.

Percy James Cutting is accused in Count I of this indictment by the Grand Jury for the Territory of Alaska, Fourth Judicial Division, of the crime of Grand Larceny committed as follows, to wit:

That the said Percy James Cutting, on or about the 22nd day of October, 1945, in the Fourth Division, Territory of Alaska, then and there being, did then and there wilfully, unlawfully and feloniously take, steal and carry away one (1) Westinghouse electric range, type TH64, Serial No. 830175, frame style No. 1086298, of the value of more than Thirty-five Dollars (\$35.00), the personal property of the United States of America, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

Count II.

Percy James Cutting is accused in Count II of this Indictment by the Grand Jury for the Territory of Alaska, Fourth Judicial Division, of the crime of Grand Larceny committed as follows, to wit:

That the said Percy James Cutting, on or about the 24th day of October, 1945, in the Fourth Division, Territory of Alaska, then and there being, did then and there wilfully, unlawfully and feloniously take, steal and carry away one (1) Westinghouse refrigerator, further identified by a refrigeration unit name plate showing model JX-5, style 9630150, Serial No. 4218652, of the value of more than Thirty-five Dollars (\$35.00), the personal property of the United States of America, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

Dated at Fairbanks, Alaska, this 23rd day of February, 1946.

/s/ HARRY O. AREND,
United States Attorney.

Witnesses before the Grand Jury:

Andrew Jackson Hall, Thomas E. Murton,
Bernard J. Zobel, Joseph L. Lymp, Charles V.
Cors, Mrs. D. E. Nichols, Virginia Houston,
Erling Nestland, James M. Jorgensen, Mrs.

Ben Grueneich, Leo Hardy, Harold Byrd, Stanley D. Baskin.

Endorsed: A True Bill.

/s/ T. K. DOWNES,
Foreman of Grand Jury.

[Endorsed]: February 25, 1946.

[Title of District Court and Cause.]

ARRAIGNMENT AND PLEA

Came Harry O. Arend, United States District Attorney, representing the Government; came the defendant in person and represented by Warren A. Taylor.

This being the time set for the Arraignment in this cause and the defendant stating that he was ready, upon being asked if Percy James Cutting was his true name, the defendant replied in the affirmative, whereupon the Indictment was read to him and a true copy of the same handed to him.

The defendant waived time for entering his plea and stated that he desired to enter his plea to both counts of the Indictment forthwith.

Upon being asked if he was Guilty of the crimes charged in the Indictment, to wit: Count I, Larceny, and Count II, Larceny, the defendant pled Not Guilty to both Counts, which pleas were duly entered.

Nov. 6, 1946.

Entered in Court Journal No. 34, Page 219.

In the District Court for the Territory of Alaska,
Fourth Judicial Division

Cr. No. 1268

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PERCY JAMES CUTTING,

Defendant.

VERDICT No. I.

We, the Jury, duly empaneled and sworn to try the above-entitled cause, do, from the law and the evidence therein, find the defendant, Percy James Cutting, guilty of the crime of larceny as charged in the Indictment in this cause; and we further find that the value of the property so stolen was Less than the sum of \$35.00, lawful money of the United States of America.

Done at Fairbanks, Alaska, this 15th day of November, 1946.

/s/ CHESTER MOYER,

Foreman.

Nov. 15, 1946.

Entered in Court Journal, No. 34, Page 244.

[Endorsed]: Filed Nov. 15, 1946.

In the District Court for the Territory of Alaska
Fourth Judicial Division

Cr. No. 1268

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PERCY JAMES CUTTING,

Defendant.

JUDGMENT AND SENTENCE

On this, the 11th day of December, 1946, came the attorney for the Government, and the defendant appeared in person and by counsel.

It Is Adjudged that the defendant has been convicted upon a verdict of guilty of the crime of petit larceny, an offense included in the charge of grand larceny set forth in Count I of the Indictment herein, said included offense consisting of taking, stealing and carrying away one (1) Westinghouse electric range, type TH 64, Serial No. 830175, frame style No. 1086298, of the value of less than Thirty-five Dollars (\$35.00), the personal property of the United States of America, on or about the 22nd day of October, 1945, in the Fourth Division, Territory of Alaska; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted and that he be hereby com-

mitted to the custody of the United States Marshal for the Fourth Division of Alaska, and that said defendant be imprisoned for said crime in the Federal Jail at Fairbanks, Alaska, for a period of one (1) year from the date hereof.

Done at Fairbanks, Alaska, this 11th day of December, 1946.

/s/ HARRY E. PRATT,
District Judge.

Dec. 11, 1946.

Entered in Court Journal, No. 34, Page 297.

[Endorsed]: Filed Dec. 11, 1946.

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

The Defendant moves the Court to grant him a new trial for the following reasons:

1. That the Court erred in denying Defendant's motion for acquittal in Count One of the said indictment made at the conclusion of the Government's case.
2. The verdict is contrary to the weight of the evidence.
3. The verdict is not supported by substantial evidence.
4. The Court erred in overruling Defendant's objections to the admission of a certain unsigned credit memorandum introduced for the purpose of

establishing ownership in the Plaintiff of the property alleged to have been the subject of larceny by the Defendant.

/s/ WARREN A. TAYLOR,
Of Defendant's Attorneys.

Service of the foregoing motion admitted this 18th day of November, 1946, by receipt of copy thereof.

/s/ HARRY O. AREND,
United States Attorney.

[Endorsed]: Filed Nov. 18, 1946.

[Title of District Court and Cause.]

ORDER

Came Harry O. Arend, United States District Attorney, representing the Government; defense counsel, Warren A. Taylor, was not present.

Mr. Arend presented argument resisting the defendant's Motion for a New Trial and Motion for Arrest of Judgment.

It was Ordered that both motions be denied and the time for passing sentence be set for 10:00 a.m., Wednesday, November 27, 1946.

Nov. 26, 1946.

Entered in Court Journal, No. 34, Page 271.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant: Percy J. Cutting, Fairbanks, Alaska.

Names and Address of Appellant's Attorneys: Warren A. Taylor, Fairbanks, Alaska; and Stanley J. McCutcheon, Anchorage, Alaska.

Offense: Petty Larceny.

Judgment and Sentence: December 11, 1946.
Sentenced to one (1) year in the Federal Jail.

Now Confined in U. S. Jail at Fairbanks, Alaska.

I, the above named appellant hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated this 11th day of December, 1946.

/s/ PERCY J. CUTTING.

Service of copy acknowledged this 11th day of December, 1946.

/s/ WM. E. BERRETT,
Assist. U. S. Attorney.

[Endorsed]: Filed Dec. 11, 1946.

[Title of District Court and Cause.]

STIPULATION RE PRINTING OF RECORD

It Is Hereby Stipulated by and between the above-named parties, through their respective attorneys, as follows:

1. That in printing the papers and records to be used on the hearing on appeal in the above-entitled cause for consideration of the United States Circuit Court of Appeals for the Ninth Circuit, the title of the Court and cause in full on all papers shall be omitted, except on the first page of the printed record, and there shall be inserted, in lieu thereof, the words "Title of Court and Cause"; and

2. That all endorsements on all papers used as part of said record shall be omitted except the Clerk's filing mark and admission of service.

Dated this 8th day of August, 1947.

/s/ HARRY O. AREND,
United States Attorney.

/s/ WARREN A. TAYLOR,
Attorney for Defendant.

[Endorsed]: Filed Aug. 8, 1947.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK OF THE DISTRICT COURT TO TRANSCRIPT OF RECORD

I, John B. Hall, Clerk of the District Court for the Territory of Alaska, Fourth Judicial Division, do hereby certify that the foregoing, consisting of 82 pages, constitutes a full, true, and correct transcript of the record on appeal in Cause No. 1268 Cr., entitled United States of America, Plaintiff, versus Percy James Cutting, Defendant, and was made pursuant to and in accordance with the Praecipe of the Defendant and Appellant, filed in this action, and is the return thereof in accordance therewith, and

I do further certify that the Index thereof, consisting of page "a", is a correct Index of said Transcript of Record, and that the list of attorneys, as shown on page "b", is a correct list of the attorneys of record; also that the cost of preparing said transcript and this certificate, amounting to \$13.10, has been paid to me by counsel for appellant in this action.

In Witness Whereof, I have hereunto set my hand and affixed the seal of this Court this 22nd day of September, 1947.

[Seal] /s/ JOHN B. HALL,
Clerk, District Court, Territory of Alaska, 4th Div.

[Endorsed]: No. 11513. United States Circuit

Court of Appeals for the Ninth Circuit. Percy James Cutting, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court for the Territory of Alaska, Fourth Division.

Filed September 25, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the District Court for the Territory of Alaska
Fourth Judicial Division

Cr. No. 1268

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PERCY JAMES CUTTING,

Defendant.

TRANSCRIPT OF TESTIMONY AND
PROCEEDINGS

Harry O. Arend, United States Attorney, and William E. Berrett, both of Fairbanks, Alaska, attorneys for the plaintiff.

Warren A. Taylor, of Fairbanks, Alaska, and Stanley McCutcheon, of Anchorage, Alaska, attorneys for the defendant.

The above cause came on regularly for trial at

ten o'clock a.m., Tuesday, November 12, 1946, before the Honorable Harry E. Pratt, Judge of the above-entitled court, at Fairbanks, Alaska, and the following is the transcript of the testimony given and the proceedings had therein.

The Court: This is the time set for the trial of United States vs. Percy James Cutting. Are the parties ready?

Mr. Arend: We are ready, your Honor.

Mr. Taylor: Defendant is ready, your Honor. If the Court please, we would like to have Mr. Stanley J. McCutcheon entered as associate counsel for the defendant.

The Court: He may be so entered.

(Thereupon the jury was duly empaneled and sworn, and counsel for plaintiff made his opening statement before the jury.)

Mr. Taylor: Defendant waives opening statement, your Honor.

The Court: Very well. Call your first witness.

Mr. Taylor: If the Court please, at this time we would ask that the witnesses be put under the rule.

The Court: Very well, all persons who are to be witnesses in this case will remain outside until called to testify.

MAUREEN NICHOLS

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. Will you state your name, please?

A. Maureen Nichols. [1*]

The Court: All persons who expect to be witnesses in this case shall remain outside until called.

Mr. Taylor: If the Court please, we would like to approach the bench for the purpose of making a motion.

The Court: I beg your pardon?

Mr. Taylor: We would like to approach the bench for the purpose of making a motion outside of the hearing of the jury.

The Court: Very well. Come forward then.

(The following motion was made outside of the hearing of the jury:)

Mr. Taylor: If the Court please, we move at this time that Count I of the Indictment be dismissed upon the grounds that the same does not constitute, or, the allegations contained therein do not constitute a cause of action against the defendant; and we make the same motion as to Count II.

The Court: Would you specify in what way they are deficient?

Mr. Taylor: This motion is made upon the

*Page numbering appearing at foot of page of original certified Transcript of Record.

(Testimony of Maureen Nichols.)

grounds that there is no allegation in the complaint, or, in the Indictment, as to the place of the crime, where the crime is supposed to have taken place.

Mr. Arend: We have alleged the jurisdictional situs.

Mr. Taylor: It don't show it was in the possession of the plaintiff, the United States, at the time it was taken.

The Court: The motion is denied. [2]

(The following proceedings took place in the presence of the jury:)

By Mr. Arend:

Q. State your name, please.

A. Mrs. Maureen Nichols.

Q. Where do you reside, Mrs. Nichols?

A. 1223 Denali Apartments, Fairbanks.

Q. Where are you employed?

A. Mail and records section, Post Engineers, Ladd Field.

Q. How long have you been employed in that capacity?

A. Since sometime in March, 1945.

Q. And as such employee, are you in charge of the correspondence that comes and leaves Ladd Field?

A. The Post Engineers' organization, yes.

Q. Only for the Post Engineers' organization?

A. Yes, that's right.

Q. Now, have you checked your files for a letter dated September 19, 1941, addressed to the area engineer at Anchorage by Lieutenant Bush?

(Testimony of Maureen Nichols.)

A. Yes, I have.

Q. Regarding some equipment that included electric ranges and refrigeration? A. Yes.

Q. And what did you find?

A. I was able to locate that letter, it's a carbon copy, with a carbon copy of a shipping ticket attached. [3]

Q. Do you know where the originals of that would be?

A. Well, I would assume that they are in the files of the Engineers at Anchorage.

Mr. Taylor: If the Court please, I move that the answer be stricken on the grounds that the witness is assuming something.

The Court: Motion denied.

Q. What you found was a copy of the letter?

A. Yes.

Q. When would that letter have been placed—this copy, when would it have been placed in your files and records?

A. All correspondence is placed in the files either the day immediately, the day following when it was sent out, or the day after that, depending on how much mail went out at the time.

Q. Do you have a place to—

Mr. Taylor: Just a moment, I object to any further examination on this copy until a satisfactory explanation is made as to where the original is. I think the original is the best evidence. A proper foundation has not been laid for the examination in regard to the copy.

The Court: That is a correct statement of the

(Testimony of Maureen Nichols.)

law. Copies are not admissible until it is shown that the original is not available.

Mr. Arend: Well, your Honor, with this witness here I [4] would like to have the papers that she found, at least marked for identification. I may later be able to——

The Court: It may be marked.

Q. (By Mr. Arend): Is this the copy of the letter you have been talking about? A. Yes.

Q. And a copy of the ticket, shipping ticket?

A. Yes, that is it.

Q. And may these be removed from this file?

A. Well, they aren't ordinarily removed. You may have the whole file.

Mr. Arend: We may have the whole file. I am only offering it as to these two items, your Honor, for identification.

(Thereupon a carbon copy of a letter from James D. Bush, Jr., to Area Engineer, Anchorage, Alaska, dated September 19, 1941, was marked as Plaintiff's Identification 1-A. The shipping ticket attached thereto was marked Plaintiff's Identification 1-B. The documents are in words and figures as follows:)

“RMG/mg

“September 19, 1941.

“Subject: Shipping Ticket.

“To: Area Engineer, U. S. Engineer Office,
Anchorage, Alaska.

“1. There is enclosed true copy shipping ticket dated July 30, 1941, transferring to the Quarter-

(Testimony of Maureen Nichols.)

master various property which has been installed in permanent buildings Nos. 7, 9, 10, and 11. [5]

"2. It is not know what disposition was made of the original shipping ticket but the Post Quartermaster has entered the various items on his property records and has assumed control of them.

JAMES D. BUSH, JR.

1st Lt., Corps of Engineers,
Resident Engineer.

"Incl. (trip): Shipping ticket"

"Consignor: The District Engineer, Seattle, Washington.

"Date Shipped or Delivered, July 30, 1941.

"Ship to—Quartermaster, Ladd Field, Fairbanks, Alaska. Authority or Req. No. AR 30-1435. Transportation Cost of..... Chargeable to..... P/A No.

Quantity "Ordered	Shipped	Stock No.	Article	Unit	Unit Cost	Total Cost
52			Chairs, Arm, Wooden	Ea.	7.65	\$ 397.80
156			Chairs, side, wooden	Ea.	5.75	897.00
16			Extinguishers, Fire 1 gal.	Ea.	31.00	496.00
17			Extinguishers, fire, 2½ gal.	Ea.	7.68	130.56
34			Ranges, electric, Model TH-64	Ea.	53.00	1,802.00
34			Refrigerators, electric, Model E-8-40	Ea.	165.00	5,627.00

"This is a true copy

"W. H. HAMMOND,
2nd Lt. A. C.
Asst." [6]

(Testimony of Maureen Nichols.)

Q. (By Mr. Arend): Are this letter and shipping ticket in the same condition as they were when you took them out of your files and records?

A. Yes, they are.

Mr. Arend: You may cross-examine.

Cross-Examination

By Mr. Taylor:

Q. Mrs. Nichols, how long have you had these records in your possession?

A. Well, they have been in the office ever since I have been there. The letter was written in 1941. I know nothing of it previous to the time I was——

Q. (Interrupting): How long have you been in that office? A. Since March, 1945.

Q. Mrs. Nichols, did you testify before the grand jury? A. Was that some time last year?

Q. Yes. A. Yes.

Q. In this same case? A. Yes.

Q. Now, when did you first run across this exhibit here which is marked "Identification 1-A?"

A. I believe it was sometime in January, 1945, that we first located it.

Q. Had you been looking for that before that time? [7] A. No, I hadn't.

Q. And did you testify before the grand jury that you didn't have any records on that particular refrigerator?

A. I knew at the time I testified that we had this correspondence in the file.

Q. I don't believe that quite answers the ques-

(Testimony of Maureen Nichols.)

tion, Mrs. Nichols. Would you answer the question as I put it to you?

A. Well, I don't understand.

Q. I asked if you testified that you had no records pertaining to this refrigerator and electric range.

A. I didn't testify to that.

Q. To the grand jury?

A. I didn't testify that I didn't, no, because I knew when I went to court that this material was in the file.

Q. You had seen it in the file, had you?

A. Yes, I had.

Q. And did you produce it at that time?

A. No, I did not.

Mr. Taylor: That is all.

Mr. Arend: That is all.

(Witness excused.) [8]

J. M. JORGENSEN

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. J. M. Jorgensen.

Q. Where is your residence, Mr. Jorgensen?

A. In Fairbanks.

Q. Where are you employed?

(Testimony of J. M. Jorgensen.)

A. Ladd Field.

Q. How long have you been employed at Ladd Field? A. Since June, 1941.

Q. What kind of work have you done there since then?

A. Chief electrician foreman.

Q. In the course of your employment at Ladd Field, Mr. Jorgensen, have you had occasion to handle Westinghouse Electric Ranges?

A. I have.

Q. And have you had occasion to handle Westinghouse electric refrigerators? A. I have.

Q. When did you first handle electric ranges and refrigerators at Ladd Field of the Westinghouse make?

A. In 1941; in the fall—in the winter of 1941. [9]

Q. And what was your experience in that regard? A. Maintenance and repair.

Q. What type and what number of each item did you handle in that year?

A. What number? What do you mean by that: by quantity?

Q. Yes. A. Well, I couldn't say.

Q. Do you know where these items came from: the ranges and refrigerators? A. No, sir.

Mr. Taylor: Just a moment. I object to the question. There is no specific ranges or refrigerators mentioned. We don't know whether he means these particular ones that are in the courtroom now or others.

(Testimony of J. M. Jorgensen.)

The Court: He answered that he didn't know.

Q. Mr. Jorgensen, do you know if any of those ranges or refrigerators that you handled there in 1941 ever went to Satellite Field?

A. What?

Q. Do you know if any of them ever went to Satellite Field? A. During that year?

Q. Or at any time subsequent.

A. I do not know.

Q. You do not know.

Mr. Arend: If the Court please, we would like to have [10] these items marked for identification.

(Thereupon an electric stove was marked Plaintiff's Identification No. 2 and an electric refrigerator was marked Plaintiff's Identification No. 3 by the clerk of the court.)

Q. (By Mr. Arend): Mr. Jorgensen, will you step down here, please, and examine Government's Identification No. 2 and state, if you can, whether or not you handled that type of range at Ladd Field. A. The type is similar.

Q. The type is similar. And will you look at Government's Identification No. 3 and state whether you have handled that type of refrigerator at Ladd Field?

A. From the external appearances, it is the same.

Q. Now, do you have any personal knowledge of your own of the transfer of any of either this type of range or this type of refrigerator from Ladd Field to Satellite? A. No, sir.

Mr. Arend: You may cross-examine.

(Testimony of J. M. Jorgensen.)

Cross-Examination

By Mr. Taylor:

Q. Mr. Jorgensen, can you identify either plaintiff's identifications 2 or 3 as any range or refrigerator that has ever been at Ladd Field?

A. I could not do that.

Mr. Taylor: That is all.

(Witness excused.) [11]

RICHARD F. COLEMAN

called as a witness on behalf of the plaintiff, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. Richard F. Coleman.

Q. Where do you reside, Mr. Coleman?

A. Germantown, Ohio.

Q. What is your occupation at the present time?

A. I am a government employee at Wright Field.

Q. Were you ever stationed as a soldier at Ladd Field?

A. I was an army officer at Ladd Field for three years, from February of 1943, until the first of February of 1946.

Q. What was your rank at that time?

(Testimony of Richard F. Coleman.)

A. When I arrived at Ladd Field I was a first lieutenant. Later that same spring, of 1943, I made captain, and then at the time I left Ladd Field I was a major.

Q. Mr. Coleman, will you step down here and examine Government's Identification 2, an electric range? Will you just step down and examine that? Examine it carefully, as thoroughly as you like. (The range was examined by the witness.) Have you ever seen that range before?

A. I have seen the range before. [12]

Q. And on what do you base that statement?

A. I base the statement on the grounds that with the copy of the memorandum, credit memorandum receipt that I hold, that has the serial number on it; that that serial number and model number were carefully checked at the time I signed the original issue memorandum receipt in July of 1943.

Q. And do you have that receipt with you?

A. This is a copy of a credit memorandum receipt that was brought to me in my office in Air Corps Supply early in '44, in January of 1944.

Mr. Arend: I would like to have it marked for identification, if you will just hand it to the clerk there, please.

(Thereupon Memorandum Receipt, dated January 1, 1944, was marked by the clerk of the court as Plaintiff's Identification No. 4 and is in words and figures as follows:)

(Testimony of Richard F. Coleman.)

“Memorandum Receipt

Voucher No.....

Sheet No.....

No. of Sheets.....

Credit

Date: 1 January 1944

“Turned in by: Capt. Richard F. Coleman

“Place: Ladd Field, Alaska. Property: Post Engineer (Utilities)

Quantity	Stock No.	Nomenclature	Unit
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1		Range, electric, Model TH-64, Serial 830175	only
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(Formerly located in Apt. 11,
NCO 14) [13]

* * * * *

“Account No.....Received the above articles.

RALPH F. GALLOGLY,
Lt. Col., C. E. Post
Engineer (Utilities)”

(Testimony of Richard F. Coleman.)

Q. (By Mr. Arend): And what transaction does that memorandum receipt represent?

A. At the time I moved out of apartment 11 in N.C.O. 14—I moved out on the 1st of December of 1943, and at that time the stove was left in that apartment. We didn't move things like that ourselves and actually take them over to the Engineers and turn them in, because they were too heavy for a person to move in that respect, so that all I did was to notify the Engineers that I was not using the stove any longer and desired to be released from the debit memorandum receipt which I had signed in July.

Q. Do you have the debit memorandum receipt that you signed in July of '43?

A. I do not. At the time I left Ladd Field, the first of February of this year, I had a clearance from all supply officers on the base, and subsequent to that time I discarded a lot of the paper work that I had accumulated while at the Field, and I do not have that issue slip.

Mr. Arend: I would like to have this marked for identification.

(Thereupon a Memorandum Receipt dated July 8, 1943, was [14] marked as Plaintiff's Identification No. 5 by the clerk of the court and is in words and figures as follows:)

(Testimony of Richard F. Coleman.)

“Memorandum Receipt

Voucher No.....

Sheet No.....

No. of Sheets.....

“Debit

Date: July 8, 1943

“Issued To: Capt. Richard F. Coleman

“Place: Apt. 11, NCO 14, Ladd Field, Alaska

Property: Post Engineer (Utilities

“Quality Stock No. Nomenclature Unit)

1	Refrigerator, Westinghouse, Model E-5-40 Style 991321, Serial 882909, Post Engineer No. 14	ea.
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“R * * * * *

Received the above articles.

OK /s/ RICHARD F. COLEMAN,
Capt. A. C.”

“Account No.....

Q. (By Mr. Arend): Now, I show you Plaintiff's Identification No. 5 and ask you to examine that. Have you seen that before?

A. This is my handwriting and my signature.

Q. That is your signature. And when did you place your signature on that paper?

A. In July of 1943, as the paper is dated July 8

(Testimony of Richard F. Coleman.)

of 1943. Now, that isn't the time that I started using the stove. I started using the above in approximately——

Mr. Taylor (Interposing): If the Court please, I object to the witness testifying here unless in response to a direct question. There is a lot of voluntary information. Testimony [15] is being volunteered here and not asked for.

The Court: Very well. Objection sustained.

Q. Just answer the questions that I ask. Now, referring again to Identification No. 4 in your lap there, is that signed by anyone?

A. No, it is not.

Q. Can you explain the reason for an absence of a signature there?

A. After I had repeatedly asked in Post Engineers for a receipt for this stove——

Mr. Taylor (Interposing): Just a moment, Mr. Coleman, I object to any reference to this particular copy—he said it was a copy—until the proper foundation is shown for the use of it for questioning this witness. He says it isn't signed. We don't know just exactly what it is.

The Court: Objection overruled.

(The question and answer were read by the reporter.)

A. An employee of the engineers—I don't remember who—came into my office in Air Corps Supply and handed me this unsigned memorandum receipt. At the time I questioned it, wanting a signed

(Testimony of Richard F. Coleman.)

receipt and tried to get a signed memorandum receipt. I know that I didn't accept this paper as being a release for me since it wasn't signed. However, I never was able to—I either did not get a signed copy or let it drop, after contacting the Engineers later and their office telling me I was no longer charged for the stove. [16]

Q. Now, that identification No. 4, is it a carbon copy of an original?

A. I would say that it is an original copy.

Mr. Arend: If the Court please, we offer Plaintiff's Identification No. 4 in evidence which is the memorandum dated January 1, 1944—

Mr. McCutcheron (Interposing): Let us have a look at it.

Mr. Taylor: —which the witness testified was given to him after he returned the stove.

Mr. Taylor: We object to the introduction of it in evidence upon the ground that it isn't signed. The witness stated that it was a copy. It certainly would not be binding on anybody. The witness has testified that he didn't feel it released him whatsoever.

The Court: Mr. Coleman, at the time you received this credit memorandum in January of 1944, you had an electric range that you had received from the government? Had you had it in your possession?

A. At the time I got this receipt, I no longer had it.

Q. Where was it?

A. At the time I moved from the apartment in N.C.O. 14, apartment 11, on the 1st of December of

(Testimony of Richard F. Coleman.)

1943, the range was left there, and to my knowledge I never saw the range after that.

Q. The Court: How do you know that this receipt here bears the number of the electric range that you had? [17]

A. At that time I had the issue slip on the range and did check the serial number on the turn-in slip with the serial number on the issue slip that I had signed, and they were one and the same; and I had checked the serial number and style before I signed the original issue.

The Court: You had checked the number on the issue slip with the stove and found it correct?

A. Yes, sir.

The Court: And then you checked the number on this receipt with the——

A. (Interposing): With the issue slip.

The Court: ——with the number of the issue slip which you still had?

A. Yes.

Mr. Taylor: If the Court please, I want to make that same objection upon the further ground that the proper foundation has not been laid to show the time and the place and who this receipt was executed by.

The Court: Objection overruled. It may be admitted.

(Thereupon Plaintiff's Identification No. 4, hereinabove set forth, was marked by the clerk of the court as Plaintiff's Exhibit A.)

Q. (By Mr. Arend): Mr. Coleman, at the time

(Testimony of Richard F. Coleman.)

you were issued an electric range as you have testified, were you issued any other electrical appliances?

A. I was also issued an electric refrigerator—Westinghouse.

Q. On this Plaintiff's Identification No. 5, did you find any reference to the refrigerator that you were issued?

A. Yes, sir.

Q. And did you check with the refrigerator itself, the number on there?

A. Before I signed this paper, I checked that serial number on the refrigerator, yes, sir.

Q. Are you able to identify this refrigerator as the refrigerator that you had?

A. I have not looked at this refrigerator.

Q. Would you take a look at it?

(The refrigerator was examined by the witness.)

A. This the type of refrigerator that I had. I don't know where the serial number is on it.

Q. That is as much as you can say: That is the type you had?

A. Yes. As there is no serial number on it, that would be as much as I could say.

Q. All right. Now, in the receipt, government's Identification No. 5, that you signed on July 8, 1943, can you account for the line drawn through the reference to the electric range? Do you yourself know why that has been scratched out?

A. No, sir, I do not know.

Q. You do not know?

(Testimony of Richard F. Coleman.)

A. This was done at some time subsequent to the time I signed the paper. We could make a conjecture, but that is not——

Q. (Interposing): No. We don't want you to conjecture.

Mr. Arend: You may cross-examine the witness.

Cross-Examination

By Mr. Taylor:

Q. Mr. Coleman, could you — were you — would you be able to identify that stove, the electric range over there, without the reference to this so-called credit receipt that you have?

A. By referring to the original memorandum receipt that I signed which, I believe, has been introduced into evidence before I can identify this as the same stove?

Q. The original memorandum receipt.

A. The one that carries my signature?

Mr. Arend: It has not yet been introduced as an exhibit, however.

Q. Well, I believe in identifying this stove, you referred to this receipt, did you not?

A. I refer to this in conjunction with the issue copy that I had in my possession at that time.

Q. I mean your identification of it just a short time ago as the stove that you had, there was no way you could identify that range unless you referred to this—you might call it a blank receipt—it that right?

(Testimony of Richard F. Coleman.)

A. The serial number on this so-called receipt, this receipt that they gave me, which is as much as they ever gave me, is the same serial number that was on the copy of the issue slip that I had, and I know that I cross-referred the serial numbers at that time.

Q. But I mean in going to that stove, could you identify that stove without referring to the credit memorandum?

A. Without reference to this credit memorandum?

Q. Yes.

A. Or the other exhibit. My memory didn't say that serial number, no. I would have to refer to a written piece of paper because I wouldn't remember the serial number or style of a stove that I used in 1943.

Q. There is no distinguishing marks on that stove by which you could identify it, then?

A. No, sir.

Q. It was a stove similar to the one you had?

A. It is a stove similar to what I had.

Q. Now, who accepted this credit memorandum or credit receipt? Who should that have been signed by, Mr. Coleman?

A. That should have been signed by some employee of the Post Engineers that had knowledge that that stove was turned back in.

Q. Do you know what employee that should have been, or an officer? Would it be an officer or an employee?

(Testimony of Richard F. Coleman.)

A. Well, it would be someone signing for Colonel Gallogly who was the Post Engineer at that time, but I wouldn't say who would have signed it.

Q. Were those forms, those credit receipts, were they readily available to anybody who wanted to pick them up around post headquarters, or around the Engineers' office?

A. Not having been around the Post Engineers' office, I can't say.

Q. But you did eventually accept that as a final release, then, of your obligation to the government for that range?

A. No, I am not saying that, and I was not satisfied at the time, as I mentioned in my previous testimony. I can't trust my memory so far as knowing whether I later got a signed copy or whether by checking with the property office of the Engineers later and asking them what I was charged with and they definitely found no record of my being charged any more with that stove.

Q. Now, I am not familiar with the army procedure, but, when you are discharged, is it a fact then that you get a release if you have been charged with government property, which I presume all army officers are? Am I right?

A. Yes.

Q. When you are discharged or leave, you get a clearance from some superior officer, or supply officer, or quartermaster officer; is that right?

A. Yes.

(Testimony of Richard F. Coleman.)

Q. And then that is considered as a release of all claims by the government against you?

A. Yes, sir. [22]

Mr. Taylor: That is all.

Mr. Arend: That is all.

(Witness excused.)

Mr. Arend: Your Honor, my next witness is not in chronological order, but he is an important employee at Fort Richardson and is anxious to get back; he can get army transportation back. I would like to call him out of order and connect his testimony up later if I may.

The Court: Very well.

JAMES WISE

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. James Wise.

Q. Where do you reside, Mr. Wise?

A. Headquarters, Alaskan Department.

Q. Anchorage, Alaska?

A. Anchorage; that's right.

Q. Were you ever employed at Satellite Field near Fairbanks, Alaska? [23]

A. Yes, sir, I was.

(Testimony of James Wise.)

Q. When were you there?

A. November, 1943, to October, 1944.

Q. And what position did you hold there?

A. I was resident engineer.

Q. While at Satellite Field, did you have a lady secretary named June Peterson?

A. Yes, I did.

Q. While she was at Satellite Field, did you help her to get some electrical kitchen equipment?

A. I did.

Q. Will you state what you did in that respect?

A. All it required was a phone call to Ladd Field requesting what she wanted.

Q. And what was it you requested?

A. At the time it was an electric stove, electric refrigerator, and a few other things, household fixtures.

Q. Do you know what company made the range and refrigerator? A. No, I do not.

Q. You do not. Will you please step down and examine Government's Identification 2 and 3 there, a range and refrigerator? (The witness examined the range and refrigerator.) Can you positively identify those as having been ordered by you from Ladd Field? A. No, sir, I can't. [24]

Q. Can you state whether they resemble the items you received? A. Well, it is——

Mr. Taylor (Interposing): Well, if the Court please, I object to the question upon the ground that it calls for a mere conjecture on the part of the witness.

(Testimony of James Wise.)

The Court: I think you should be more definite. "Resemble" is a pretty broad term.

Q. (By Mr. Arend): Do they look like the items you ordered from Ladd Field?

Mr. Taylor: We object for the same reason, your Honor. The question calls for the same kind of an answer—conjecture.

Q. Then I will ask him, first: Do you know whether a range and refrigerator were delivered in compliance with your order to June Peterson?

A. Yes, sir, they were.

Q. Can you state whether these are the items: Identification 2 and 3?

A. I can't state that. I do know they were a standard make. The government contracted certain——

Mr. Taylor (Interposing): I move to strike that answer as not responsive to the question.

The Court: It may be stricken.

Q. (By Mr. Arend): What color were they?

A. I believe they were white, white enamel. [25]

Q. Did you see the range and refrigerator you ordered for Miss Peterson in her apartment at any time?

A. Yes, I have seen it there.

Q. Did you sign a property receipt for these two items?

A. I am not certain whether I signed a memorandum receipt for them or not, sir. I generally had to sign for everything that came out or someone signed for me and I checked it.

Q. Do you know who delivered the range and refrigerator to Miss Peterson?

(Testimony of James Wise.)

A. It was my property man, Mr. Zobel.

Q. And can you identify the place occupied by Miss Peterson for the jury? What kind of a place was she living in?

A. It was a stout house. We had several employees——

Q. (Interposing): Do you know the number of the stout house? A. No, sir, I don't.

Q. Do you know what happened to the range and refrigerator that were delivered to June Peterson?

A. No. After she left, other people used it. Several families would use the refrigerator and stove.

Q. Do you know Mr. Cutting?

A. Yes, I do.

Q. Did you ever talk to him about the range and refrigerator while they were still at Satellite Field?

A. Prior to my departure, when I was preparing to have all——

M. Taylor (Interposing): If the Court please, I object [26] to the question on the ground that the proper foundation has not been made as to where and when and who was present when the conversation took place.

Mr. Arend: Well, the question first calls for "yes" or "no."

The Court: Just answer the question.

Q. (By Mr. Arend): Did you, at any time, talk to Mr. Cutting regarding the range and refrigerator that were delivered to Miss Peterson while they were still at Satellite Field?

A. Yes, I did speak with him.

(Testimony of James Wise.)

Q. When was that?

A. A few days before my departure. It was some time around the first week of October in 1944.

Q. Who was present there?

A. I believe just the two of us were in my office. He came to my office and spoke to me.

Q. What was said at that time?

A. I was asked whether or not he would be given permission to utilize the range and refrigerator and whether or not they should be retained at the Field.

Q. What did you say?

A. I just mentioned so long as the paper work was taken care of, it was all right to leave them at Satellite Field.

Q. What did you mean by "paper work?"

A. They were charged to me. All the property out there was [27] charged to me, and the only way I could take it off my record was to send it back and get a clearance slip on it or transfer it to somebody else and have them be responsible for it.

Q. Could you transfer it without sending it back to Ladd Field?

A. Yes, sir.

Q. Did you make such an arrangement for Mr. Cutting?

A. That was the intention, yes. I believe I passed it on to my property man to take care of the paper work.

Q. Do you know, of your own knowledge, whether Mr. Cutting ever received authority from Ladd Field to retain the items at Satellite?

(Testimony of James Wise.)

A. I don't remember ever seeing any paper work, if that is what the question is.

Q. Did you have a conversation with Mr. Cutting regarding the range and refrigerator in June, 1945?

A. On one of the trips that Mr. Cutting made to the office—he stopped to see me—I believe in one conversation I asked him if he ever had the paper work taken——

Mr. Taylor (Interposing): Just answer that “yes” or “no.” A. Yes, we did.

Q. Where was that?

A. It was in my office at Fort Richardson.

Q. Can you place the time more definitely? [28]

A. No. I believe he could most likely give the time. It was on one of his trips down there. He hadn't been transferred to Fort Richardson. I believe he was on a one or two day temporary duty.

Q. Who was present when you had this conversation? A. In my office?

Q. Yes.

A. There were two engineers in the office at the time. I don't know whether they heard the conversation or not.

Q. You don't know? A. No.

Q. Do you know their names?

A. Well, one was Mr. Kukkula; he was one of my assistants, and I believe that is the only persons that were in the office at that time, and the secretary.

(Testimony of James Wise.)

Q. There was no other woman?

A. I believe the secretary.

Q. What was said at that time? What conversation did you have relative to the range and refrigerator?

A. I asked him if the paper work had been straightened out, and he replied it had pertaining to the stove and the refrigerator.

Mr. Arend: You may cross-examine.

Mr. Taylor: No cross-examination.

(Witness excused.) [29]

HAROLD BYRD

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. Harold Byrd.

Q. Where do you reside, Mr. Byrd?

A. In Fairbanks.

Q. Where are you employed?

A. Ladd Field.

Q. What is your position out there?

A. Auditor for the Resident Engineer.

Q. How long have you been employed at Ladd Field in that capacity?

A. Since the first of August, this year.

(Testimony of Harold Byrd.)

Q. Prior to that, what office did you hold?

A. I was the chief clerk for the Post Engineer.

Q. Would that be in the Post Utilities?

A. The Post Utilities.

Q. Are you familiar with the mode of handling government property at Ladd Field; that is, to whom such property comes consigned and any changes that have been made since the beginning of Ladd Field in that respect? Just yes or no.

A. Yes. [30]

Q. Now, will you describe to the jury here what records are kept when property is received at Ladd Field for the government?

A. Generally when property is received at Ladd Field, there is a shipping ticket—that is the title of it, “shipping ticket”—that would be received from the agency from which the property had been shipped, and, when it is received here, a receiving report would normally be made by the receiving agency on the base. Then, after that, the property would be recorded on, normally would be recorded on a property record card.

Q. When Ladd Field was first started, what agency received the shipments of property for the use of Ladd Field?

A. Pardon me, at what time?

Q. When Ladd Field was first started.

A. Well, it was first started under the construction quartermaster. That was during the construction, and I believe all of the original materials for building the base were consigned to the constructing quartermaster.

(Testimony of Harold Byrd.)

Q. Does he still receive all the property for Ladd Field?

A. No. Since then, various agencies on the base have property which is peculiar to their own type of business consigned to them individually, and they receive it themselves; such as, for instance, the engineers, or the quartermaster or the ordnance department would receive property consigned to them at the corps of engineers or ordnance.

Q. Now, can you state as to whether or not Westinghouse electric ranges and refrigerators were received at Ladd Field in 1941? [31]

A. In 1941 that would have been shipped from, possibly from the quartermaster depot, or perhaps from a quartermaster agency outside, who would have purchased it for the constructing quartermaster here.

Q. And does the constructing quartermaster still have charge of such refrigerators and ranges here at Ladd Field? A. No.

Q. Who has now?

A. The Engineers, that is, the Post Engineers, formerly called Utilities' Engineer.

Q. When was that change made?

A. It was made early in 1942.

Q. Are you familiar with the buildings at Ladd Field originally numbered 7, 9, 10, and 11?

A. Yes, I am.

Q. Are they identified by any other numbers?

A. Yes.

(Testimony of Harold Byrd.)

Q. Will you state what those other numbers are for each one?

A. Well, 7 is identified both as building 107 and as N.C.O. 14, meaning non-commissioned officers' quarters with fourteen family units; and 9 is now 109; it is also called N.C.O. 12, meaning that it contains twelve non-commissioned officers' family units. What was the other numbers?

Q. 10 and 11 are the other two.

A. Oh, 10 is the commanding officer's quarters out there and 11 [32] is called Officers' Row; it is now No. 111.

Q. Have you checked the records at Ladd Field in the property and housing sections of the U.S.-E.D., that is, the United States Engineers?

A. That's right. I have.

Q. Have you checked them to determine whether there are any records of ownership of a Westinghouse electric range, type TH 64, Serial No. 830175?

A. Yes.

Q. What did you find in that respect?

Mr. Taylor: If the Court please, I object to the question. The record speaks for itself.

The Court: Objection sustained.

Q. Did you know Colonel B. F. Hatch while he was at Ladd Field?

A. Yes.

Q. Do you know when he terminated at Ladd Field or was transferred from Ladd Field?

A. Yes. He left Ladd Field in about the first of September.

Q. Of what year?

A. Of 1945.

(Testimony of Harold Byrd.)

Q. And did you know a Colonel, or a Major McGuire? A. Yes.

Q. At Ladd Field? A. Yes.

Q. What was his full name, do you know? [33]

A. I do not know.

Q. Was there only one Major McGuire?

A. So far as I know.

Q. Where was he stationed?

A. He was stationed first at Ladd Field in the supply and service office and later as commanding officer at Twenty-Six Mile.

Q. I show you Plaintiff's Identification 5 and ask you to examine that, please, and state whether you have ever seen that before.

A. Yes, I have seen it.

Q. How do you know?

A. Why, my initial is on the back of it. I was requested to search the records for an electric range at one time last winter and did so, and this is one of the papers that I ran across.

Q. Where did you find that paper in the records?

A. I found it amongst the memorandum receipts which had been transferred from the post engineer's utilities organization to the supply section of the engineers at Ladd Field.

Q. And is it in the same condition now as it was when you saw it there in the files?

A. Well, yes, except for this stamp on the front.

Mr. Arend: You may cross-examine.

Mr. Taylor: No cross-examination.

(Witness excused.) [34]

BERNARD J. ZOBEL

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. Will you state your name, please, Mr. Zobel?

A. Bernard J. Zobel.

Q. Where do you reside at the present time?

A. At Anchorage.

Q. What is your occupation?

A. I am employed by the resident engineer at Ford Richardson.

Q. Were you ever employed at Ladd Field?

A. Yes, sir.

Q. And at Satellite Field? A. Yes, sir.

Q. During what period of time?

A. I think it was about the last of March that I came to Satellite Field.

Q. What year? A. '43.

Q. And then how long were you there?

A. I am sorry. I believe that was '44, and I was there till—I am sorry; it was '43, and in '44, about the first of the year, I transferred back into Ladd Field. [35]

Q. In what capacity were you employed during the spring of 1944?

A. As a property clerk for the resident engineer.

Q. At Satellite? A. Yes, sir.

Q. What was the nature of your occupation and your first duties?

(Testimony of Bernard J. Zobel.)

A. Well, to watch out for materials that came onto the job and to tally in the materials before they were used on the job.

Q. Do you know James Wise? A. Yes, sir.

Q. And June Peterson? A. Yes, sir.

Q. Did you have any dealings with her sometime in the spring of 1944?

A. Well, Mr. Wise was the resident engineer and as such was my employer, and Miss Peterson was his secretary and more or less the office manager, you would say, at the time, and so we answered somewhat to her also.

Q. And what dealings did you have with them in the spring of 1944 in connection with your work and relative to an electric range and electric refrigerator? Just tell what you did, not what was said, but just what you did.

Mr. Taylor: Well, if the Court please, we object to the question upon the ground unless it is directed to a specific refrigerator and electric range.

The Court: You can move to strike it out if it isn't [36] tied up with this refrigerator and range. Overruled.

A. I went into Ladd Field with a flat bed truck, pickup a refrigerator and an electric range and took them out to Satellite Field.

Q. Did you have any paper records?

A. I don't recall that I did.

Q. And where did you deliver them at Satellite Field?

A. I delivered them to the resident engineer's office, at the rear, rather, of the resident engineer's

(Testimony of Bernard J. Zobel.)

office, to a stout house which was then used by Miss Peterson as her quarters.

Q. At whose direction did you place them in the stout house?

A. I believe Miss Peterson. Either she or Mr. Wise. Miss Peterson, I believe it would be.

Q. You stated there were no paper transactions connected with the delivery of these items?

A. I do not recall that there was, no.

Q. What make of range and refrigerator were they? A. That I don't recall now.

Q. Was it ordinary practice not to have any paper records of such a transaction?

A. No. Ordinarily it would not be.

Q. Do you know the serial number of either of these items, the range or the refrigerator?

A. I do not.

Q. Do you recall any other identifying marks on either of the [37] items? A. No, sir.

Q. Will you please step down and take a look at Government's Identifications 2 and 3, the range and the refrigerator back there, please? (The witness examined the range and the refrigerator) Did you yourself ever use the range and refrigerator that you delivered to the stout house of June Peterson?

A. Well, I was one of a party of possibly four or five that did. Several of us did some cooking out there. I didn't happen to do any cooking myself. We had a chap who usually did that, but we cooked more or less coffee and that is the extent of my—

(Testimony of Bernard J. Zobel.)

Q. (Interposing): Can you state whether or not these are the range and refrigerator?

A. No, sir.

Q. That you delivered to Satellite Field?

A. I cannot.

Q. You may take the stand now. Now, will you state to the jury, if you know, how personal property can be taken, personal property of an individual working out there, can be taken off Satellite Field? Can you explain that to the jury?

A. Well, it is usually done with——

Mr. Taylor: (Interposing): Just a moment. We object.

Q. Just yes or no. A. Yes. [38]

Q. Now, will you explain to the jury the procedure?

A. Well, the government has a form that is called a tally-out form, which was used for items that was taken from one project to another or to town as the case may be.

Q. Do you know Mr. Cutting, the defendant here? A. Yes, sir.

Q. Did you ever discuss with him the range and refrigerator that you delivered to June Peterson's stout house at Satellite Field? Just "yes" or "no."

A. No.

Mr. Arend: You may cross-examine.

Mr. Taylor: If the Court please, I move to strike all of the testimony of the witness now on the stand upon the ground that there is no identification of the range, no connection with the crime

(Testimony of Bernard J. Zobel.)

charged in the Indictment, and it has no probative value upon the issues now before the Court.

The Court: Well, I think that if at the close of the government's case that is still the situation, you may renew your motion. We will let it stand until that time.

Mr. Taylor: You reserve the ruling on the motion, then?

The Court: No, I am not taking it under advisement. I just said your motion is too early.

Mr. Taylor: No cross-examination, Mr. Zobel.

(Witness excused.) [39]

CHARLES V. CORS

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. Charles V. Cors.

Q. Where do you reside, Mr. Cors?

A. 1818 El Comino, Redwood City, California.

Q. Were you ever employed at Satellite Field?

A. Yes, sir, I was.

Q. When were you there? A. '45.

Q. Were you there during the spring of '45?

A. Yes, sir.

Q. What was your occupation at that time?

A. Carpenter.

(Testimony of Charles V. Cors.)

Q. Do you know the defendant, Mr. Percy James Cutting, sitting here? A. I do.

Q. Do you know Joseph Lymp?

A. Yes, I do.

Q. Andrew Jackson Hall? A. Yes. [40]

Q. Now, I call your attention to a day on or about the 18th of May, 1945, at Satellite Field. Do you remember having anything to do on that day with an electric refrigerator and an electric range? Just "yes" or "no." A. Yes.

Mr. McCutcheon: We object to it as leading, your Honor.

The Court: It is preliminary. Objection overruled.

Q. Just "yes" or "no." A. Yes.

Q. Please state to the jury what you had to do with the range and refrigerator on that day.

A. In my own words?

Q. Yes.

Mr. Taylor: If the Court please, I object to the form of the question as not proper. I don't think the proper foundation has been laid to go into it any further.

The Court: Please read the question and answer.

(The question and answer were read by the reporter.)

The Court: Objection overruled.

Q. Please state what you had to do with a range and refrigerator on that day. Just tell the jury in your own words.

(Testimony of Charles V. Cors.)

A. Mr. Lymp came into the shop and asked me if I would help him load some things on the truck, and I said I would; so we proceeded to one of the stout houses on Satellite Field and loaded this range and refrigerator and started to town. Just four miles from Twenty-Six Mile, we pulled into a gravel dump and unload the stove and refrigerator from this truck onto a red pick-up, and the pick-up proceeded to town.

Q. Do you know who belonged to the stout house, or, rather, to whom the stout house belonged from which you took the refrigerator and range?

A. Well, it had been issued to Mr. Cutting.

Q. Now, did you ever discuss this range and refrigerator, or, did you discuss this range and refrigerator with Mr. Cutting at that time, on that day?

A. Yes, I did.

Q. Who was present?

A. The parties concerned.

Q. That is just you and Mr. Cutting?

A. No. Joe Lymp.

Q. Joe Lymp. What was said?

A. I said, "Sandy,"—that is his nickname—I asked him, "what is the score, Sandy?"—which, of course, is quite natural—and Sandy said, "I bought it from M. K." They were selling a lot of things out at the field at that time, and that was all. I let it go at that.

Q. Did you see the electric range and refrigerator at any time after you made this transfer at the gravel pit?

(Testimony of Charles V. Cors.)

A. Not that I could positively identify, no, sir. I never did see it again after that, technically, not that I could identify. [42]

Q. Will you step down and examine Government's Identification 2 and 3, the range and refrigerator?

A. Do you want me to take a look at it?

Q. Yes, just look them over. Are they the range and refrigerator that you helped Joe Lymp take from the stout house?

A. That I couldn't say, sir.

Q. You couldn't say? A. Not positively.

Q. Not positively? A. No, sir.

Q. Did you ever do any work for Mr. Cutting himself, personal work? A. Yes, I did.

Q. Where at?

A. At the Mount McKinley Ice Cream Company.

Q. What was the nature of the work you did there? A. Carpenter work.

Q. Carpenter work. Did you ever see Government's Identification 2 and 3 up there in the apartment, or articles resembling them?

A. Articles resembling them.

Q. Just "yes" or "no", now, have you checked the records at Ladd Field in the property and housing sections of the U.S.E.D. to determine whether there are any records of ownership of a Westinghouse electric range, Type TH 64, Serial No. 830175? [43]

Mr. McCutcheon: We object to it as not the best evidence, your Honor.

(Testimony of Charles V. Cors.)

The Court: Well, objection overruled. You made the journey to make such a check?

The Witness: I did.

Q. Did you find any records?

A. No, sir.

Q. Now, did you examine the records out there relative to a Westinghouse electric refrigerator, having a refrigeration unit model JX-5, Serial No. 4218692? Just "yes" or "no". Did you search the records? A. Yes.

Q. Did you find any records?

A. No, sir.

Mr. Arend: You may cross-examine.

Cross-Examination

By Mr. Taylor:

Q. Mr. Cors, what date did you say that you were at Satellite Field and you had the truck with Mr. Lymp?

A. Well, I worked there between the early part of March until the end of October.

Q. I believe, in response to a question by Mr. Arend, you stated a specific date, on the 18th of some month. What month was that?

A. I told him it was between . . . it could have been between May or July or August . . . June, July, or August. After all something like this comes up, and after a specific length of time I can't remember specifically. It could have been any of those months.

(Testimony of Charles V. Cors.)

Q. May, June, July, or August. And you assisted Mr. Lymp in loading these things on the car?

A. The electric stove and refrigerator, yes.

Q. Where were they at the time you put them on the truck?

A. In a stout house at the Twenty-Six Mile.

Q. Now, also you state that you moved them down four miles and put them in a gravel pit?

A. Well, the truck was pulled into the gravel pit off of the road, and the pick-up was there, and we moved them from the Ladd Field truck onto the pick-up.

Q. They were on a Ladd Field truck when you took them in?

A. Yes, sir, they left the Twenty-Six Mile on a government truck.

Q. What kind of a pick-up were they put on?

A. A U-Drive, a red one.

Q. And who was driving the pick-up?

A. If I recall, it was Andrew J. Hall.

Q. And where did you go then?

A. I came home on the government job.

Q. Down to Fairbanks? A. Yes, sir.

Q. And which way did the pick-up go?

A. Towards Fairbanks.

Q. Both the cars came in this way. Now, which side of the road did you turn off to go to this gravel pit?

A. On the right-hand side.

Q. How far did you drive off of the road?

A. It was approximately one-quarter of a mile.

(Testimony of Charles V. Cors.)

Q. What was the condition of the road?

A. Rough.

Q. How was it as to mud?

A. None that I recall.

Q. How did you handle these boxes from one truck to the other? Did you unload them?

A. Just picked them up and moved them over from one to the other.

Q. Now, who moved them?

A. Andrew Hall, Joe Lymp, and myself. It took the three of us.

Q. Were they in a crate at that time?

A. No, sir.

Q. Can you identify these as the range and the refrigerator that you took down there?

A. No, sir.

Q. You said later you were in Mr. Cutting's home over the Mount McKinley Ice Cream Company and you saw a range and refrigerator up there?

A. Yes, sir. [46]

Q. And they looked like these, did they?

A. I couldn't exactly say that I noticed. There was some up there. It didn't make any difference to me.

Q. Do you know the make of the range and refrigerator that was moved down by you and Mr. Hall to the gravel pit? Did you pay any particular attention to that?

A. No, sir.

Q. Now, when was it you worked up—You say you worked up at Sandy's home. Between what dates were you working up there?

(Testimony of Charles V. Cors.)

A. I don't recall any specific date. It was just during the summer.

Q. And you say you saw the range and the refrigerator in there?

A. I seen some. I don't know what they were. I don't know which ones they were, but there was a range and refrigerator up there.

Q. What else did he have in there in the way of furniture?

A. Ordinary household furniture.

Q. What do you mean by "ordinary household furniture"? Just what was in the apartment in the line of household furniture?

A. Some table and chairs.

Q. What kind of a table?

A. Ordinary chairs and table.

Q. Where was the table placed? Where was it?

A. In the kitchen.

Q. What wall was it against? [47]

A. The window.

Q. And that was the only thing in there: tables and chairs. How many chairs?

A. I can't see what sense this has got to do with it. I am not going into somebody else's—

Q. (Interposing) I just wanted to find out what your powers of observation were.

A. What?

Q. I just wanted to find out what your powers of observation were.

(Testimony of Charles V. Cors.)

A. I am not going into somebody else's place to investigate, after all.

Q. That is all there was in the kitchen: a table and chairs?

A. There could have been a table or chesterfield there, so far as I know. When you just walk into somebody's house, you don't take an inventory.

Q. Didn't you do some work up around there, Mr. Cors? A. Yes, sir.

Q. Do you know whether there was a sofa or davenport in the place? A. Yes, sir.

Q. There was one there?

A. There was a stove and refrigerator there.

Q. And sofa?

A. Do you want me to be specific?

Q. No. I am asking you a question. I want you to answer the question. The question is: Was there a davenport in the place?

A. A chesterfield, yes, and there was also a piano.

Q. And a large armchair?

A. There could have been.

Q. There could have been?

A. That's right.

Q. Isn't it a fact that you just assume that these things were in there; that you figure everybody has them? It was a pretty nice apartment, wasn't it, Mr. Cors?

A. Well, I was invited up there one time to see how nice it looked.

(Testimony of Charles V. Cors.)

Q. Just answer the question, Mr. Cors. We don't want any information volunteered.

A. What was the question?

(The question was read by the reporter.)

A. That's right.

Q. Was there a sink in the kitchen?

A. Yes.

Q. Was it built in or was it an open sink?

Mr. Arend: We object to this, your Honor, as irrelevant and immaterial to the issues in this case. It isn't proper cross-examination.

The Court: Yes. I think it has gone far enough.

Mr. Taylor: If the Court please, I believe I am entitled to test this witness' recollection as to the other furniture in the house.

Mr. Arend: He will be asking next if there were any flies on the wall.

Q. (By Mr. Taylor): Were there any flies on the wall, Mr. Cors?

Mr. Arend: We object to that.

Q. Who was your foreman at Ladd Field, Mr. Cors? Who was the superintendent, or your superior?

A. Oh, I had so many of them there, I don't recall. There could have been Madison, Kelly, Paul Stricker.

Q. Was Mr. Cutting, was he your superintendent at Ladd Field?

A. No, sir, that was at Satellite Field.

Q. At Satellite Field, I mean.

A. Oh, that was Mr. Cutting.

(Testimony of Charles V. Cors.)

Q. And you worked for him all of the time that you were there? A. Yes.

Q. I believe you stated in response to a question by Mr. Arend that you had a conversation with Mr. Cutting about this. About what time did that conversation take place, and where did it take place? Calling it a little further to your attention, you say it was after you moved the range and frigidaire or helped Mr. Lymp.

A. State your question again, please.

Q. When and where did that conversation take place? A. About what? [50]

Q. What?

A. About the stove and refrigerator?

Q. Yes.

A. I don't believe Sandy was there at the time we unloaded it. I believe it was the next day.

Q. And what was your purpose in asking him about the stove and refrigerator?

A. Oh, just personal curiosity, more or less.

Q. Did you think it a little bit odd to be transferring that stuff from one truck to another?

A. Well, Mr. Cutting was my boss. When he told me to do it, it was good enough for me. I am not going to ask for a receipt or anything.

Q. Did you talk to Mr. Cutting prior to helping Mr. Lymp load that on the truck?

A. No, I didn't.

Q. But you talked to him after you came back the next day? A. The next day.

(Testimony of Charles V. Cors.)

Q. And that was the first conversation you had with Mr. Cutting in regard to the frigidaire and the stove? A. That's right.

Q. What time did you terminate at Satellite Field, Mr. Cors? A. What time?

Q. Yes. What time did you terminate over there?

A. The latter part of August—the latter part of October.

Q. October, 1946? A. '45.

Q. '45?

A. At Twenty-Six Mile, yes. Then I came in to Ladd Field.

Q. And can you place this particular transaction any closer than somewhere in May, June, July, or August of 1945?

A. No, sir, I really can't to be honest about it. Mr. Taylor: That is all, Mr. Cors.

Redirect Examination

By Mr. Arend:

Q. Mr. Cors, how did you know that you were to transfer the range and refrigerator to this pick-up that Mr. Hall was driving?

A. Oh, we were driving to the gravel dump from the Twenty-Six Mile, after Joe Lymp came into the carpenter shop and asked me to load it on, and Joe says, "We'll pull off in here"; so we pulled off in the gravel dump and it was just unloaded from one to the other.

Q. Who was driving the truck that picked up the refrigerator and range from the stout house?

A. At the Twenty-Six Mile?

(Testimony of Charles V. Cors.)

Q. At the Twenty-Six Mile.

A. Joe Lymp.

Q. Joe Lymp? A. Yes. [52]

Q. He was in charge of it, was he?

A. That's right.

Mr. Arend: That is all.

Recross-Examination

By Mr. Taylor:

Q. Just one other question. When you left Satellite Field, which way did you drive out of there?

A. Towards Fairbanks.

Q. Were there any M.P.s at the gate, or entrance? A. Yes, sir.

Q. Did the M.P.'s check that truck?

A. Not very thoroughly. They never did.

Q. Wasn't it customary for them to check the truck?

A. Not very thoroughly.

Q. Did you have a tally out slip for that?

A. I don't know if we had a slip on that. Joe Lymp had charge of that. It was his worry, not mine.

Q. Was there anything in the truck but the refrigerator and the range?

A. Yes, the truck was loaded with materials.

Q. What else was on there?

A. I couldn't say, sir.

Q. When you drove out of the Field, when you passed the M.P.s did you stop?

A. Oh, yes. All trucks had to stop. [53]

(Testimony of Charles V. Cors.)

Q. Did you see Mr. Lymp hand a tally-out slip to the M.P.s?

A. That I couldn't swear to. I imagine there was one. It is almost second nature to hand one to them before you take a truck out.

Q. Did you say that was a Ladd Field truck you used?

A. Yes, sir.

Q. And you had driven that truck from Ladd Field to Satellite Field?

A. Oh, everybody drove the truck more or less.

Q. Was that truck stationed at Satellite Field?

A. Yes, sir, so far as I know it was there all of the time.

Q. Who customarily drove it: Mr. Lymp?

A. No. Andy Hall and myself, whenever anything had to be brought from town; it all depended on how important our jobs were. Sometimes we would get someone else to do it. We all had drivers' licenses.

Q. Did you drive the truck in addition to your carpenter duties?

A. When they were closing up the Field.

Q. Mr. Lymp drove it at times?

A. Yes, sir.

Q. Mr. Hall, was he working there at that time?

A. Yes, sir.

Q. Did he drive the truck, too?

A. At different times, yes, sir. [54]

Mr. Taylor: I believe that is all, Mr. Cors.

Mr. Arend: That is all.

(Witness excused.)

ANDREW JACKSON HALL

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. Andrew Jackson Hall.

Q. Where do you reside, Mr. Hall?

A. Slater Camp.

Q. What is your occupation?

A. Electrician.

Q. Where are you employed now?

A. Ladd Field, sir.

Q. Were you employed at Satellite Field at any time?

A. Yes, sir.

Q. When were you there?

A. During 1945.

Q. In what capacity?

A. As electrician.

Q. Do you know the defendant, Mr. Percy James Cutting?

A. Yes.

Q. Have you ever been associated with him in business?

A. Yes, sir.

Q. Are you still?

A. No, sir.

Q. What business were you together in?

A. We had an electrical shop in town.

Q. Where?

A. At the old Moose Hall, Second and Wickersham.

Q. When were you together in business?

A. This was during 1945.

(Testimony of Andrew Jackson Hall.)

Q. Do you still have the business yourself?

A. Yes, I have the business.

Q. Did you have a U-Drive pick-up at Satellite Field on or about the 18th day of May, 1945?

A. Yes, sir.

Q. And what was the occasion for having that pick-up there that day?

A. Well, I had gone out to pick up some scrap lumber.

Q. Did you have any conversation with Mr. Cutting that day? A. Yes.

Q. Relative to your pick-up? A. Yes.

Q. Who was there? Who was present when you had this conversation?

A. I don't remember if anyone—I don't believe anyone was present besides he and myself.

Q. What was said? What was the conversation about? Just tell the jury.

A. Well, the best I remember, he says that he had a stove and refrigerator there; it was being loaded onto a government truck and if I would stop on my way in at a certain place and transfer it on the pick-up.

Q. What else was said?

A. And then bring it to the apartment, or the building, or the Moose Hall on Second and Wickersham, and he would help me unload it when I came in.

Q. And what did you do after your conversation with Mr. Cutting?

(Testimony of Andrew Jackson Hall.)

A. Well, I went ahead and loaded my scrap lumber, and later in the afternoon when they, after the other truck had gone on, I went along behind this truck and came to a place and turned off and went out to an old gravel pit out there, and we transferred the stove and refrigerator onto our pick-up.

Q. What person or persons were in this truck that was ahead of you?

A. Chuck Cors and Joe Lymp.

Q. What did you do after you got the range and refrigerator onto your pick-up?

A. Well, I drove on into town and parked it around in front of the building.

Q. Did you see Mr. Cutting any more that day?

A. Yes.

Q. What was he doing then?

A. Well, he came over there to the place, and we unloaded this stuff there. [58]

Q. Where did you put them?

A. I believe in the passage-way there, just as you go in on the first floor.

Q. How long did they remain in the passage-way on the first floor?

A. I can't remember, sir, just exactly how long they remained there; maybe a week or two weeks.

Q. Then what was done with them?

A. Well, I helped—one night I helped him carry them upstairs into the apartment.

Q. Now, Mr. Hall, will you step down and take a look at Government's Identifications 2 and 3, the range and refrigerator? Just examine them carefully.

(Testimony of Andrew Jackson Hall.)

(The range and refrigerator were examined by the witness.)

Q. Now, are they the range and refrigerator that you helped haul into town that day and place in the Moose Hall?

A. I can't definitely say they are, sir. They are similar. They look like the same ones, but I don't have any way of knowing about that.

Q. Did you examine them for serial numbers at that time? A. No, sir.

Q. You may take the witness stand again. Now, will you please state to the jury, when and where you first saw the range and refrigerator that you helped haul that day, May 18, 1945?

A. Well, when I first saw them, I guess it was about the first week when I went out there, which was probably the first of December, 1944. I saw them at that time.

Q. Where did you see them then?

A. They were in one of the small buildings that was being used there.

Q. Did they remain in that same building?

A. For possibly two months, or maybe three months. Then we moved them into another building.

Q. And do you know whose building that was?

A. Well, it was a government building.

Q. How far apart are the two buildings that contained these items—that is, the one where they were first and the one where they were moved to—how far apart were they?

A. About thirty, maybe forty feet.

(Testimony of Andrew Jackson Hall.)

Q. Did you ever use the range and refrigerator when they were in those buildings out there at Satellite?

A. Yes, several of us fellers, cooked on it and used the refrigerator also.

Q. Do you remember what make they were?

A. Yes. They were Westinghouse stove and refrigerator.

Q. Do you know how long the range and refrigerator remained in the Moose Hall after you placed them there in 1945? Just "yes" or "no".

A. Do I remember?

Q. Do you know how long they remained there? "Yes" or "no".

A. Not exactly, no. [60]

Q. Not exactly. Well, do you know what was done with them after they were placed upstairs?

A. Yes, sir.

Q. What was done with them?

A. Well, they were taken back to Satellite Field.

Q. And why were they taken back to Satellite Field?

A. Well, about this time there was being some investigation of some other things, and Mr. Cutting asked me if—he was worried about it and thought there might be an investigation——

Mr. Taylor: (Interposing) Just a moment. We object to that conversation unless the time, place, and who was present is established. There is no foundation laid for it.

The Court: Well, do that.

(Testimony of Andrew Jackson Hall.)

Q. All right. You say you discussed the matter with Mr. Cutting as to taking them away from the Moose Hall and taking them back to Satellite Field?

A. Well, there was no discussion. I don't think you would call it discussion. He just asked me if I would help him take them back out there.

Q. Now, when was that?

A. I am not good at remembering dates. I think it was probaly—it might have been July or August. I believe it was probably in August.

Q. Did you take them back to Satellite Field?

A. Yes.

Q. And when did you do that?

A. Well, in August. I think it was in August.

Q. And you say now that you had a conversation with Mr. Cutting relative to taking them back out there, is that right? A. Yes.

Q. But you don't know definitely when that was?

A. No, sir, I couldn't say exactly.

Q. Was it before or after you took them back out to Satellite Field?

A. Well, we discussed it before we took them back out, sure.

Q. Will you state what you discussed?

A. Well, the best I remember is Mr. Cutting says, "Well, there is an investigation out there," and we had been talking about this, this other investigation that was coming up, and he says, "I suppose we had better take that back out there; it is too hot." And he asked me if I would help him take them back out as we are going out to work,

(Testimony of Andrew Jackson Hall.)

and I said, "Sure, I will help you." I was riding in the truck with him going to work, and I helped him load it back on the truck and take them back out and load them back into the same building we had taken them out of.

Q. Did you use them after you had taken them out there the second time? A. No, sir.

Q. Why not? [62]

A. We did not have any occasion to. The gang had pulled out. My wife was in town, and I just wasn't staying out there at night at that time.

Q. Now, do you know—"yes" or "no"—do you know how long the range and refrigerator remained at Satellite Field after you took them out there the second time? A. Not exactly.

Q. Were they taken away from Satellite Field a second time? A. Yes.

Q. When was that?

A. Well, I believe it was probably the last of September, or about the—about the last of September—or the first of October.

Q. And did you take any part in removing them from Satellite Field the second time?

A. Yes.

Q. Did anyone help you?

A. Mr. Cutting and I.

Q. And where did you take them the second time?

A. Well, we took the refrigerator back to the Moose Hall in the passage-way there, as before;

(Testimony of Andrew Jackson Hall.)

the stove was put into a building in the back part of the building which was at that time used by the Veterans of Foreign Wars.

Q. How long did they remain there?

A. I think two or three weeks.

Q. Then what happened to them?

A. Well, he asked me if I would crate them up for him; that he wanted to take them to Anchorage.

Q. What did you do when he asked you that?

A. I told him, yes, I would crate them up for him.

Q. How did you crate them up?

A. Well, by cutting plywood to the proper size and boxing them up, and I made the plywood boxes myself. I just built a box around the stove and the refrigerator.

Mr. Arend: Now, we would like to have these two boxes marked for identification, Mr. Clerk.

(Thereupon the above-mentioned boxes were marked Plaintiff's Identifications 6 and 7 by the clerk of the court, 6 being for the stove and 7 for the refrigerator.)

Q. (By Mr. Arend) Will you please examine those identifications, the two boxes?

(The witness examined the boxes indicated.)

Q. Did you have anything to do with the making of those two identifications?

A. Yes, sir. At least I can definitely identify the crates, the boxes.

Q. Now, after you built the crates, what did you do? Just remain where you are please.

(Testimony of Andrew Jackson Hall.)

A. I didn't do anything with them. I just left them right there where I built them. [64]

Q. Did you have any conversation with Mr. Cutting or Mrs. Cutting at the time you were working on the crates and placing these items in them?

A. Well, I had promised her that——

Q. (Interposing) Just "yes" or "no".

A. Yes.

Mr. Taylor: Just a moment. I object to——

Q. Yes. A. Yes.

Q. With whom did you speak?

A. Mrs. Cutting.

Q. And what was said?

Mr. McCutcheon: Just a moment. We object unless a proper foundation is laid for this conversation. We object to it as not made in the presence of the defendant.

The Court: Objection sustained. I think you had better resume the stand.

(The witness returned to the witness stand.)

Q. (By Mr. Arend) Did you place anything in the crates besides the refrigerator and range?

A. Inside the refrigerator there was, yes, sir, some things placed inside of the refrigerator.

Q. Can you state what you placed inside of the refrigerator?

A. I could name some of the articles.

Q. Please name what you remember.

A. There was a pair of sheep-skin lined boots, or flying boots, as they call them, and I believe

(Testimony of Andrew Jackson Hall.)

there was—I remember I had a lot of trouble getting them in—was one of these packs that you carry stuff on your back. I can't definitely remember some of the other articles, but those two I do remember definitely.

Q. Now, will you examine the contents of government's Identification No. 3, the refrigerator, and state whether or not you find any of the things that you have mentioned inside of the refrigerator? You may bring them out.

A. They look the same, sir.

Mr. Arend: We would like to have these items marked, the boots. What number would that be?

The Clerk of Court: The boots will be number eight.

(Thereupon the above-mentioned boots were marked by the clerk of the court as Plaintiff's Identification No. 8.)

Mr. Arend: And then the pack sack will be what number?

The Clerk of the Court: The pack sack will be number nine.

(Thereupon the above-mentioned pack sack was marked by the clerk of the court as Plaintiff's Identification No. 9.)

Q. (By Mr. Arend) Examine the brown bag here.

A. I remember the pants and the sack, and the pack sack, and the boots. I don't definitely remember any of the other articles.

(Testimony of Andrew Jackson Hall.)

Q. The pants.

Mr. Arend: We would like to have them marked for identification. [66]

(Thereupon the above-mentioned pants were marked by the clerk of the court as Plaintiff's Identification No. 10.)

A. I just remembered this blanket here around this. That is all I remember.

Q. Did you place the waffle iron in the refrigerator?

A. I can't definitely remember the waffle iron.

Q. That is all then. You may take the stand again.

(The witness returned to the witness stand.)

Q. Just "yes" or "no", did you at any time after November 7, 1945, speak with Mr. Cutting relative to the range and refrigerator? "Yes" or "no." A. Yes.

Q. When was that?

A. That, I think, was in July, 1946. I think it was in July of '46.

Q. Where at? A. At Ladd Field.

Q. And who was present at that time?

A. No one. He and I is all.

Q. What was said at that time?

A. He asked me what I had told the grand jury; why I had told the grand jury some things that I had told them, and I told him that I just answered the questions truthfully that was asked me; and then he told me that there was no one except myself

(Testimony of Andrew Jackson Hall.)

and Mrs. Cutting that knew about the stove and refrigerator being moved back to Satellite and then back again, and he know that I was the one that told them about it.

Q. Did you have a telephone conversation with Mr. Cutting on December 17, 1945.?

A. I had a telephone conversation with him long distance. I don't remember the date, sir.

Q. Where was he?

A. In Anchorage.

Q. Was that the only telephone conversation from Anchorage that you had with him?

A. Yes, I think so.

Q. What was said at that time?

A. Well, he just asked how I was getting along, and so forth, and if Mr. Baskin, the F.B.I. agent, had been asking me questions and he just told me not to tell him anything. That is the most I remember about that.

Mr. Arend: You may cross-examine.

Cross-Examination

By Mr. Taylor:

If the Court please, it is only a few minutes till five o'clock I would like to suggest we adjourn until tomorrow morning, because this cross-examination is liable to be quite long.

The Court: Yes, I think so, too. We will take an adjournment in a few minutes, ladies and gentlemen of the jury, and in the meantime remember do not talk about this case with anyone or permit any-

(Testimony of Andrew Jackson Hall.)

one to talk about it in your presence or about the parties. Keep your mind perfectly free from an opinion until the case is finally submitted to you.

Mr. Arend: If the Court please, I would like to ask permission to have this witness identify some pictures of buildings out at Satellite Field.

The Court: Very well. We will take adjournment until ten o'clock tomorrow morning.

(Thereupon court was adjourned and was duly reconvened at ten o'clock a.m., November 13, 1946, and the following proceedings took place:)

The Court: Call the roll of the jury.

(All members of the jury were present.)

The Court: Counsel ready to proceed with the trial of this case of the United States v. Cutting?

Mr. Arend: Yes, your Honor.

Mr. Taylor: Ready, your Honor.

ANDREW JACKSON HALL

a witness on behalf of the plaintiff, having been previously sworn, resumed the witness stand and was further examined and testified as follows:

Further Direct Examination

By Mr. Arend:

Mr. Arend: If the Court please, I would like to introduce as exhibits of the government two photographs. Counsel have agreed that they may be introduced.

(Testimony of Andrew Jackson Hall.)

The Court: Very well, they may be admitted.

(Thereupon the photographs above referred to were marked by the clerk of the court as Plaintiff's Exhibit B and Plaintiff's Exhibit C.)

Q. Mr. Hall, I show you Plaintiff's Exhibit B and ask you to look at it and state if you know where the building bearing the number 580 on the door is located?

A. This is a building used at Satellite Field, on an intersection of streets. I don't remember just the name of the streets there, but it is one of the buildings which was used there for——

Q. (Interposing) To whom did the building belong in 1945?

A. It belonged to the government. It is a government building. However, this is the——

Mr. Taylor: (Interposing) Just a moment. I believe the witness has answered the question. I don't want him to go into further detail.

Q. (By Mr. Arend) Was the building ever occupied by Mr. Cutting, the defendant, to your knowledge?

A. Yes. Yes, he claimed that as his hut, this building.

Q. Then I show you Plaintiff's Exhibit C, and, if you find the same building in that picture, will you please mark an "A" over the building?

A. Yes, sir.

(Testimony of Andrew Jackson Hall.)

Q. Do you know June Peterson?

A. No, sir. She left; she was gone already when I went out there.

Q. By reputation, do you know whether she occupied a building out there? A. Yes.

Q. Will you look at this picture and see if you find that building on the picture? If so, will you mark a "B" over the building.

A. Yes, sir.

Mr. Arend: May I show these to the jury, your Honor?

The Court: Surely.

(Thereupon Mr. Arend exhibited the above-mentioned photographs to the jury.)

Q. Mr. Hall, did you receive any compensation for your work in transferring the refrigerator and electric range from Satellite Field to the Moose Hall from Mr. Cutting?

A. No, sir, I did not.

Mr. Arend: You may cross-examine.

Cross-Examination

By Mr. Taylor:

Q. How old are you, Mr. Hall?

A. Forty-one.

Q. And where were you born?

A. Georgianna, Alabama.

Q. How long have you been in the Territory of Alaska?

A. Two years and nine months.

(Testimony of Andrew Jackson Hall.)

Q. Two years and nine months?

A. Approximately.

Q. And did you come directly from Alabama here?

A. No, sir.

Q. Where did you serve in the army, Mr. Hall?

A. I served in the army in San Antonio, Texas.

Q. When?

A. 1928—'27, '28, '29.

Q. You haven't served in the army during the present war then?

A. No, sir.

Q. Those army clothes that you have on, then, are clothes that you purchased from the army?

A. I purchased this shirt from the PX at Satellite Field, and I purchased the pants from Livesley's store on Second and Cushman. That cost \$7.50.

Q. And you say you have followed the electrician's trade?

A. Yes, sir.

Q. Now, when did you first go to work at Satellite Field?

Q. November or December of 1944.

Q. Was that your first work in Alaska?

A. No, sir.

Q. Had you worked up here before that?

A. I worked at Ladd Field before that.

Q. As electrician?

A. Yes, sir.

Q. And when did you first meet Mr. Cutting?

A. I believe it was the latter part of November, 1944.

Q. And what was his position at that time, Mr. Hall?

A. He was in charge, superintendent of maintenance and repair.

(Testimony of Andrew Jackson Hall.)

Q. And you were working under him from November, 1944, on till the time——

A. (Interposing) No, I wasn't working directly under him when I first went out there. I was detailed out there to do some special work, and I later transferred to his payroll out there.

Q. How long did you remain at Satellite Field after going there?

A. Until February or March, 1946.

Q. And then you transferred to Ladd Field?

A. I was transferred back to the payroll at Ladd Field, yes, sir.

Q. And then you stated, in response to questions by Mr. Arend, that you had a conversation with Mr. Cutting about hauling this range and refrigerator into town? A. Yes.

Q. Just where did that conversation take place? At Satellite Field?

A. You mean about transferring it over onto the pick-up truck which I had?

Q. Your first conversation in regard to hauling that in. [73]

A. Well, the best I remember it was out there between the office building and the power house out there where I had the truck parked.

Q. What kind of a truck did you have, Mr. Hall?

A. I don't remember if it was a Ford or Chevy. A small pick-up is all. I don't remember the make.

Q. Was it your own truck?

A. No, sir.

Q. Where did you get it?

A. Fairbanks U-Drive.

(Testimony of Andrew Jackson Hall.)

Q. About what date was that?

A. I don't remember exactly. It could have been April or May.

Q. And what was your original purpose in going to Satellite Field?

A. To pick up some scrap lumber, building material.

Q. Had you talked to Mr. Cutting before about picking up scrap lumber and building material?

A. Yes, sir.

Q. And where was the scrap pile out there, Mr. Hall?

A. It was in—the particular scrap that I was getting was in an old building out there, where a partition had been torn out of a building.

Q. How far was that from the building that you claim was owned by the government and was occupied by Mr. Cutting?

A. Oh, it is probably two hundred feet—two, three hundred feet.

Q. Did you go to the scrap pile that day and get any material off the scrap pile?

A. No. No, sir.

Q. You say this was an old partition out of a building?

A. Yes, sir.

Q. What kind of stuff was that? Was that plywood or celotex?

A. It was celotex.

Q. In sheets?

A. Well, there was half sheets, and just small strips of the batting.

(Testimony of Andrew Jackson Hall.)

Q. How much of it did you get?

A. Well, it must have been seven or eight pieces.

Q. You hired the truck to go out and get seven or eight pieces of scrap material?

A. I had some other stuff there. I had some of my clothing. I didn't live out there, because my wife had come to town and I still had a couple of foot-lockers of clothing I wanted to bring out at the same time.

Q. At the time you took the truck out to bring this stuff in, was there any M.P.s at the gate?

A. Yes, sir.

Q. Did you check in through the M. P.s?

A. Well, yes. I went through the gate, that's right. I don't know if they made a record of me going in and out or not, but I certainly went through the gate. [75]

Q. Did you stop there?

A. Yes, sir, I stopped there and waited for the signal to proceed.

Q. What did you load first? Your own personal belongings?

A. Yes, I believe I loaded my foot lockers on first.

Q. Then you went down and got these sheets of plywood and batting and so forth?

A. Yes. There was some small pieces of this linoleum that was around there also.

Q. And you say this was a little one-half ton pick-up?

A. Yes, it could be one-half ton, or three-quarters ton.

(Testimony of Andrew Jackson Hall.)

Q. You loaded this stuff on at this place where the partitions had been torn out, about two hundred feet from where this refrigerator and stove were?

A. Yes, sir.

Q. And where did you drive to after that?

A. Well, I drove back up to the power house, and I believe I got out and probably ate dinner.

Q. You did what?

A. I just parked the truck and went and had dinner out there.

Q. That was about dinnertime, was it, about noon, was it?

A. Well, yes, that's right. I am not sure that I loaded all the stuff before dinner or after dinner, but I ate dinner there that day.

Q. Then when did you see Mr. Cutting? Was it after dinner?

A. Yes. Yes, when we had the conversation about the stove and refrigerator, it was after dinner, yes.

Q. And that was the time, according to your statement, that Mr. Cutting asked you to take this refrigerator and stove in?

A. Yes.

Q. Then what did you do after you talked to Mr. Cutting?

A. I don't remember doing anything in particular. I usually stay around there awhile and talk to the boys. I don't recall anything in particular I did.

Q. Did you drive over to the place where the refrigerator and stove were?

A. No, sir.

(Testimony of Andrew Jackson Hall.)

Q. Well, how did you get the stove and refrigerator on the truck?

A. It was transferred onto my truck after I left the Field on the way to town.

Q. Did you see Joseph Lymp at that time? Do you now Joseph Lymp? A. Yes, sir.

Q. Do you know Charles Cors?

A. Yes, sir.

Q. Known as Chuck Cors?

A. That's right.

Q. Did you talk with them at the Field that day?

A. Well, yes.

Q. Did you work with those two men?

A. Not directly. They was working in the carpenter shop, and I was in the electrical department, and I knew them. [77]

Q. Did they drive truck part of the time out there, Mr. Hall?

A. Not as a regular truck driver, but, if anyone wanted to haul something, he would go get a truck. You could call it truck driving in his own work, yes, but not hired as a truck driver.

Q. Did they sometimes drive to Ladd Field?

A. Yes, sir.

Q. And other places around Satellite Field?

A. That's right.

Q. Now, at what time did you leave there that afternoon?

A. Probably two o'clock—three o'clock.

Q. You just sat around there talking between after dinnertime and two or three o'clock?

A. Yes, sir.

(Testimony of Andrew Jackson Hall.)

Q. And when you went out, I suppose you had to drive past the M. P.s when you went out?

A. That's right.

Q. Did you have a tally out slip at that time to give to the M.P.s?

A. Yes, I am sure I did, because that was customary that we have a gate pass for anything we take out.

Q. Who had given you the tally out slip to give to the M.P.s?

A. Well, Mr. Cutting was the only one authorized to do so.

Q. Do you know Mr. Ward? A. Yes.

Q. Did you ever get a tally slip from him when you were driving out?

A. Sometimes. Sometimes he would give us a tally out sheet, but they were signed by Mr. Cutting. I don't think Ward ever signed a tally out, a gate pass, with his own name.

Q. So when you went out then, you gave this tally out slip to the M.P.s?

A. I am sure I did. Sometimes, however, the M.P.s didn't collect this gate pass, this tally out. They probably wasn't interested enough if they saw what you had. Sometimes they didn't.

Q. I believe you stated in response to questions by Mr. Arend that you followed this other truck down the road?

A. Yes, I believe I followed it, or maybe we were driving right along together; I am not sure which.

(Testimony of Andrew Jackson Hall.)

Q. Did you help load the refrigerator and stove on the big truck? A. No, sir.

Q. What make was the big truck?

A. I am not sure. It was a stake body truck. I believe it was the Ford type.

Q. About what tonnage?

A. About a ton and a half, two tons, something like that.

A. Did you see that truck go out the gate past the M.P.s?

A. Well, I am not sure about that. I might have been ahead of them. [79]

Q. You might have went out first?

A. I believe I was behind him, sir.

Q. You were behind him. Well, did you see him go out the gate?

A. Yes, they were——

Q. (Interposing) Did you see them stop at the gate, at the M.P.s?

A. I don't remember. Small details like that I didn't take into consideration.

Q. You didn't pay much particular attention, then, as to whether they stopped at the gate and handed in a tally out slip; is that right?

A. That's right.

Q. How far did you say it was down to where you turned off the road?

A. About four miles.

Q. Did you see the truck that was preceding you turn off? A. Yes, sir.

(Testimony of Andrew Jackson Hall.)

Q. And then you turned off too. How far did you drive?

A. About two hundred yards.

Q. You didn't drive half a mile then?

A. Well, no, I don't think it was a half a mile, no, sir.

Q. How was the road?

A. Well, it was a little wood road there. There is no pike there or anything, but it is a pretty good wood road in there.

Q. Is it a pretty good road? A. Fair.

Q. Muddy? A. No, sir. [80]

Q. You say that was in May, you think, April or May? A. I think so.

Q. Was there any snow on the ground—patches?

A. No. No, I don't remember any snow.

Q. Now, how did you line these trucks up to move the refrigerator and stove from one to the other?

A. Well, the refrigerator and stove was on the back end of the big truck, and I just backed the pick-up to the back end of that truck and slid one over to the other.

Q. What did you do with the stuff that was on your truck?

A. It was still on my truck.

Q. Did you put this range and refrigerator on top of the stuff that you already had there?

A. Well, the range I believe was set up on top of it, and there was room on the back end of the pick-up, the best I remember, for the refrigerator.

(Testimony of Andrew Jackson Hall.)

Q. And after that did you rope that stuff down?

A. Yes, I think we—I think we tied it down with a rope.

Q. And who drove out of that road first?

A. Well, the big truck drove out first.

Q. And you followed out? A. Yes.

Q. And came to town. Now, where did you go after you came to town? After you came to town, where did you take your truck and your personal belongings and scrap lumber and this refrigerator and stove? Where did you go with that?

A. Over to the Moose Hall building on Second Avenue.

Q. And who did you see there?

A. Well, I believe Ed Mears was around and Mrs. Cutting, and I don't remember if there was anyone else around.

Q. And what did you do when you got there?

A. Well, I parked the truck there. I just parked the truck in front of the building.

Q. How long did you leave it there?

A. Oh, possibly an hour.

Q. And was your personal stuff and the scrap you picked up there still on the truck?

A. Yes, sir.

Q. And then after the hour, what did you do? Did you drive away with it?

A. No. We unloaded the stove and refrigerator there at this building.

Q. You say "we". Who do you mean by "we"?

(Testimony of Andrew Jackson Hall.)

A. Well, the best I remember it was Ed Mears and Mr. Cutting helped me unload these off the end of the pick-up.

Q. Mr. Cutting had come into town, then, since you had seen him at Satellite Field?

A. That is why we were parked there for an hour, an hour and a half, waiting. [82]

Q. What time was that?

A. It must have been, I believe, around five-thirty, something like that.

Q. Then you and Mr. Mears and Mr. Cutting, then unloaded the range and the refrigerator?

A. I think that is right.

Q. How much did the refrigerator weigh, Mr. Hall?

A. Well, it weighs, I think it weighed 250 pounds—200—250—maybe more.

Q. How did you unload it? Just lift it out?

A. By taking ahold of it and packing it in.

Q. Who took ahold of it and packed it in?

A. All of us took ahold of it.

Q. Where did you have ahold of it?

A. I don't remember.

Q. Where did Mr. Cutting have ahold of it?

A. I don't know, sir.

Q. And where did Mr. Mears have ahold of it?

A. I don't know.

Q. Where did you pack it to?

A. To across the sidewalk, through the door, and into the passageway.

(Testimony of Andrew Jackson Hall.)

Q. And how far was that?

A. Well, it is probably thirty to fifty feet.

Q. Now, where did this passageway lead to, Mr. Hall? [83]

A. Well, it lead through into the cold storge, and there was a stairway that went up into the apartment upstairs.

Q. And which way did you go with that?

A. We didn't get to the end of the passageway.

Q. Did you have a shop in there at that time, Mr. Hall? A. Yes, sir.

Q. And did this stuff go back to the shop or down the passageway towards your shop?

A. It went that way, but not that far.

Q. Did you put any of it in your shop?

A. The stove and the refrigerator?

Q. Yes. A. No, sir.

Q. How big was your shop?

A. About twenty feet one way and ten or eleven feet the other way.

Q. At that time did you have your tools and electrical equipment in the shop?

A. Yes, sir, some.

Q. Then, after you unloaded that and took it back to the passageway towards your shop, what did you do?

A. I unloaded this scrap material that I had brought there. The purpose I brought the scrap material was to build this little room. This corner of that was allotted to me for the electrical shop.

A. And you took that into the electrical shop, did you? A. Yes.

(Testimony of Andrew Jackson Hall.)

Q. You took your personal stuff to your home, did you? A. Yes, sir.

Q. And took the truck to Mr. Nehrbas; is that right? A. That's right.

Q. How much did Mr. Nehrbas charge you for the use of the truck that day?

A. Seven dollars and a half.

Q. Now, were you in partnership with Mr. Cutting at the time you did this?

A. We were. Yes, we were working together?

Q. How long did you and Mr. Cutting work together?

A. Well, he was associated with me up until the time he left for Anchorage, I think, off and on.

Q. How many jobs did you and Mr. Cutting do together as partners?

A. Well, under this—the way we did business down there—the way—he actually helped me on one job; I think that is about the only time that he actually helped me do any of the work. However, there was one day there he came in on part of the proceeds by furnishing material, and any material that was used he would get some compensation for.

Q. Did Mr. Cutting put some money into the business?

A. No, except for some material that he furnished, I don't believe he did. [85]

Q. And he actually helped on the one job. What job was that?

A. It was the job at the Fairbanks Cold Storage, putting in the refrigeration.

(Testimony of Andrew Jackson Hall.)

Q. Who did you rent this shop from, Mr. Hall?

A. Well, I rented it from Ed Mears and Mrs. Cutting.

Q. What was the rental?

A. We was paying \$25.00 per month.

Q. Was that rent paid?

A. The rent was paid after—I didn't the first—possibly the first two months I didn't pay any rent with money. I did some work for them and we—I just allowed the work that I did to kind of pay my part of the rent for the first two months. After that, the rent was paid every month.

Q. You think it was in May, then, that you had brought this electric range and refrigerator down there to your place?

A. I think it was. I believe it was in May.

Q. How long did that range and refrigerator remain there? A. In the passageway?

Q. Yes.

A. Maybe a week or something like that—maybe two weeks.

Q. What became of it then?

A. It was taken upstairs.

Q. Who took it upstairs?

A. Well, I helped Mr. Cutting take it upstairs.

Q. How did you take it up? [86]

A. We just packed it upstairs.

Q. He had hold of one end and you of the other?

A. Yes, sir. I believe Ed Mears possibly helped us on that some, too. I don't quite remember. I believe he did.

(Testimony of Andrew Jackson Hall.)

Q. You are not quite sure, though, about Mr. Mears helping. Where was the refrigerator placed upstairs?

A. Well, I believe they were placed just outside in this large area before you go into his apartment. I think he placed them there, because the rooms were not complete yet.

Q. And the range, where did you place it?

A. In the same place: in this area.

Q. And then how long did they remain upstairs, Mr. Hall?

A. Well, let's see. Three to four months, I think.

Q. And you helped move them back, you say?

A. Yes.

Q. Who carried them downstairs?

A. Mr. Cutting and I.

Q. Both of them? A. Yes.

Q. Who took them back to Ladd Field?

A. Satellite Field.

Q. Satellite Field. Now, you don't remember the exact date, then, of those——

A. (Interposing): No. I am not very good at remembering dates. I just know approximately the time. [87]

Q. Who drove the truck going back out there, Mr. Hall? A. Mr. Cutting.

Q. Mr. Cutting drove the truck out?

A. That's right. I was riding with him as we were going back and forth to work at Satellite. We took those back as we were going to work in the morning.

(Testimony of Andrew Jackson Hall.)

Q. When they went back in, did they have a tally in sheet?

A. I don't know. No, I think not.

Q. Did you stop at the M.P.s?

A. Well, the M.P.s don't check anything—they didn't at that time—anything going in. They didn't care what you brought in.

Q. They care quite a bit about what you bring out, isn't that right, Mr. Hall?

A. No, not at that time, they weren't too particular.

Q. Well, why did you take the things back to Satellite Field?

A. Why did I take them back?

Q. Yes.

A. I just went along so as to help him. He told me that since this investigation had come up about the house and everything, he was afraid that there would be an investigation down at this place, and they would find this stove and refrigerator missing.

Q. Now, did you know anything about an investigation being made at that time? [88]

A. Yes, sir.

Q. How did you know?

A. Well, just what the fellers I worked with were talking about it, and that is all.

Q. Had any investigator ever been at your place, at your shop, Mr. Hall? A. Yes.

Q. Who? A. Mr. Baskin.

Q. And about what time did Mr. Baskin come to your place?

(Testimony of Andrew Jackson Hall.)

A. Well, let's see. That might have been in June, something like that. I don't remember the date.

Q. And what did he do while he was in your place?

A. Well, he looked around, and he asked me some questions about some motors that was there, where I got them and things like that.

Q. And what did he do in regard to the motors, Mr. Hall?

A. He picked them up and brought them down to the Federal Building.

Q. Where are those motors now?

A. The motors were returned to me.

Q. When?

A. I don't remember the date, sir. Sometime last summer, possibly.

Q. They were returned to you after the indictment had been returned against Mr. Cutting this last summer? [89]

A. I am not sure if it was just before or after. It might have been before; it might have been afterwards.

Q. Was it in '46 or '45?

A. Well, it was in '46.

Q. And about what time in '46? Was it after you had appeared before the grand jury?

A. I am not sure if it was after or before, sir.

Q. Did Mr. Baskin make any promises to you about returning these motors if you would testify in this case against Mr. Cutting?

A. No, sir.

(Testimony of Andrew Jackson Hall.)

Q. Did you volunteer this information that you gave to Mr. Baskin?

A. I answered the questions that was asked me as truthfully as I could, sir.

Q. And you admitted to Mr. Baskin, then, that you was implicated in the taking of the stove and the range; is that right?

A. I told him I was working under Mr. Cutting during working hours, and he asked me if I would help him do that, and, as long as he was boss and I was getting my time right along—I did a lot of other jobs besides strictly electrical work out there. I don't know——

Q. (Interposing): After you had told Mr. Baskin about this, he then returned the motors to you; is that right?

A. Well, I might have had the motors back before then. I am not sure about that. I am not just sure when I got the motors back. [90]

Q. Your mind is particularly hazy on that?

A. I don't remember any of the dates, sir. You will notice that all the way through.

Q. Did Mr. Baskin say these motors were government property?

Mr. Arend: We object to it, your Honor, unless it is shown that Mr. Baskin knew they were government property.

The Court: Objection overruled.

Q. Did Mr. Baskin say that this was government property?

A. No, I don't believe he told me they were government property.

(Testimony of Andrew Jackson Hall.)

Q. Did he tell you why he was seizing them?

A. Well, yes, he told me why he was taking them.

Q. Why?

A. He wanted to check up and find out who the motors belonged to. He didn't know but what they were government property.

Q. Did he take anything else at the time besides the motors? A. No, sir, I believe not.

Q. How long did Mr. Baskin have those motors?

A. I don't remember—several months.

Q. Did you make any objection to him taking the motors? A. No, sir.

Q. Were the motors government property, Mr. Baskin?

A. With the exception of one motor; I am not sure of one of them. The others I am very positive were not government property. Two motors I bought from a feller that I am not exactly sure where he got them. One motor was a motor that came [91] from Satellite Field, and Mr. Cutting told me this motor had been discarded by the M. K., and if I could repair it so that it would run, well, I could have it.

Q. Did you get that motor off the scrap pile of scrap material?

A. It wasn't exactly on a scrap pile. It had been discarded.

Q. Did you ever do a wiring job, put in some light fixtures, for Mark Sells at the Pioneer Cleaners? A. Yes, sir.

(Testimony of Andrew Jackson Hall.)

Q. Just what did that job consist of? What material went into it?

A. Well, there was some wiring, conduits, and fluorescent lights.

Q. Where did you get the fluorescent lights, Mr. Hall?

A. The fluorescent lights—two of the fluorescent lights I got from Ed Mears, and there was one different type light that was in some scrap material that we brought from Satellite Field.

Q. Did you tell Mr. Sells where those fluorescent fixtures had come from?

A. No, sir. He didn't ask me where they come from.

Q. Those fixtures are still in Mr. Sells' place, are they, in the Pioneer Cleaners?

A. I am not sure if they are or not.

Q. Now, isn't it a fact, Mr. Hall, that Mr. Baskin returned these motors to you to induce you to testify against Mr. Cutting?

A. No, sir. He made me no promises whatever.

Q. You volunteered this information? [92]

A. When he asked me these questions, I answered his questions as truthfully as I could, sir.

Q. Where are you working now, Mr. Hall?

A. Ladd Field.

Q. What do you do there?

A. Electrical work.

Q. Were you made any promises of continuing in the employ of the government after admitting to Mr. Baskin that you had participated in the theft of these articles?

(Testimony of Andrew Jackson Hall.)

A. I was made no promises by anyone, sir.

Q. Have you ever discussed this matter since with Mr. Baskin?

A. Which matters is this you are talking about?

Q. In regard to continuing working for the government?

A. No, sir.

Q. Or in regard to your testimony here?

A. No, sir.

Q. Have you ever discussed with Mr. Baskin the testimony you was to give here?

A. No, I don't recall any, except when he asked me if I was willing to testify to the statements I had made to him.

Q. Did you talk to Mr. Arend about what your testimony was to be here?

A. No, sir.

Q. You voluntarily come down then and give your testimony on your own volition, then? [93]

A. Well, when I received the summons to come down.

Q. Without any reward or promises being made to you for immunity?

A. Yes, sir.

Q. Now, after you took those things out to Ladd Field, or to Satellite Field, I believe you stated in response to Mr. Arend's question that you went back out there again and got them?

A. Well, not exactly. I said that we brought them back. We brought them back to town one at a time, sir.

Q. Where were they when you took them out after bringing them in the first time? Where did you put them?

(Testimony of Andrew Jackson Hall.)

A. We put them back in the same building from which they were taken from.

Q. And what building was that?

A. That was this building No. 580 that we were just looking at the picture of here.

Q. Was that a locked building?

A. There was a padlock on it, yes.

Q. How many had the key for that, Mr. Hall?

A. There is only one key, I believe, that Mr. Cutting kept in the office.

Q. Was that a kind of an office, headquarters?

A. Where the stove and refrigerator were?

Q. Yes. A. No, sir, it was no office. [94]

Q. Was there any other furniture in it?

A. Yes, there was some chairs and a table, possibly a hat rack, something like that.

Q. A bed?

A. At this time it was carried back, there was no bed in there. There had been a bed in there.

Q. Who went back with you, Mr. Hall, when you took the range and refrigerator back?

A. Mr. Cutting. I was with him.

Q. What did you haul it in? A. A pick-up.

Q. Did you rent that pick-up?

A. No, this was the government pick-up which we drove back and forth to work.

Q. Then when you went back in, you say you took them back one at a time? A. That's right.

Q. What did you take back first?

A. I don't remember. I kind of believe it was the stove we took back first.

(Testimony of Andrew Jackson Hall.)

Q. Where did you get them from when you took them back?

A. We got them from the apartment over there at the Moose Hall.

Q. How did you get them downstairs?

A. We packed them downstairs.

Q. You and Mr. Cutting? [95]

A. Yes, sir.

Q. Did anybody else help?

A. No, I think not.

Q. You packed them out and put them in this truck and took them back to Ladd Field?

A. Satellite Field.

Q. Or Satellite Field. Was there any M.P.s out there when you took them back?

A. Oh, yes, there was M.P.s there.

Q. Did they stop you and see what was on the truck? A. No.

Q. They didn't stop you. Did you have a tally in sheet? A. No, I think not.

Q. Well, how many days was it between the time you took the stove out until you took the refrigerator out?

A. Well, I am not sure. I believe it was either the next day or two or three days, probably, between the time, is the best I remember.

Q. Then you went through the gate going back out. The M.P.s didn't stop you that time either?

A. We stopped there at the M.P.s until he recognizes you and he tells you to proceed.

(Testimony of Andrew Jackson Hall.)

Q. When you got out there, who unloaded those things out of the truck?

A. Mr. Cutting and I.

Q. And you had to get them back towards the back end of the truck and then lift them off?

A. We lifted them off the truck and through the door of the building, yes, sir.

Q. How high was the door?

A. How high was the door?

Q. Was it as high as the floor of the pick-up?

A. No, the door of the building was lower than the pick-up.

Q. The two of you then had to take the full weight of the stove and refrigerator to get it down to the level of the door? A. Yes.

Q. And you and Mr. Cutting each had hold of one side to balance it?

A. That is about the way you usually do that.

Q. And then you put them in. After taking those two things out there, how long did they remain there?

A. I am not sure; possibly two months, maybe three months, something like that.

Q. Did you help bring them back in then? I believe you stated you did. A. Yes.

Q. Did you bring them in?

A. I helped Mr. Cutting bring them in.

Q. And did you and Mr. Cutting load them?

A. Yes. [97]

Q. Did anybody else help you?

A. No, sir.

(Testimony of Andrew Jackson Hall.)

Q. And what did you use to bring them in that time?

A. We brought them in in a government pick-up, government truck.

Q. The same one you had taken them back out in?

A. Well, I don't know. Sometimes we would get a different pick-up. It might have been the same one; it might have been a different one.

Q. It was about two months they remained out there before you brought them back to town?

A. Something like that.

Q. When you brought them in, did you bring anything else at that time?

A. No, I don't believe we did.

Q. Would you say you brought those in about the 22nd of October or the 24th of October?

A. I don't remember any dates on it, sir—something like that.

Q. Was it in October?

A. I think it was. I think it was in October.

Q. Was there snow on the ground?

A. I believe there was snow on the ground.

Q. Where did you take the refrigerator and the stove when you brought them back to town the second time?

A. The refrigerator was placed in the passageway of the Moose Hall building as before. The stove was placed in the building, [98] the rear part of the building, which was occupied at that time by the Veterans of Foreign Wars.

(Testimony of Andrew Jackson Hall.)

Q. Was it the back entrance? Where was the entrance to the building that was occupied by the Veterans of Foreign Wars?

A. It was on the Second Avenue entrance.

Q. Was there any equipment in that building that you took the range to?

A. No, I think not. The best I remember there is some cold storage lockers in there, a walk-in refrigeration box, some company was using for storing meat. That is about the only thing I remember being in the back of that.

Q. Where did you place the range?

A. Just inside the first little room as you go in.

Q. You placed the refrigerator, then, back in the hallway back of the Ice Cream Company?

A. Yes, sir.

Q. The company's main office is in the front?

A. It was in the passageway on down near by the electrical shop.

Q. Mr. Cutting helped you unload that when you brought it in? A. Yes.

Q. He went over to the Veterans of Foreign Wars to help you unload this stove?

A. It was another day, yes.

Q. Did he go over there and help you unload it?

A. I went over there with him, yes. He was driving the truck. [99]

Q. He was driving the truck. Now, that was quite a bit of work, wasn't it, Mr. Hall, to haul those things back and forth?

A. Yes, that's right. You are right.

(Testimony of Andrew Jackson Hall.)

Q. And did Mr. Cutting pay you anything for that?
A. No, sir.

Q. And he hasn't paid you since for that?

A. No, I was working on—it was during my working hours mostly that this was taking place and I was doing this, giving him a hand like that. Of course, I was working for him, and he asked me to do so.

Q. Did you go back and forth with Mr. Cutting quite often before any of these articles were taken?

A. Yes. I was riding with him before and all along during the summer.

Q. And was it during working hours that you went to George Nehrbas and hired the pick-up truck?

A. I wasn't working that day. I was on annual leave that day, a furlough; that day I took a day off.

Q. When did your annual leave start?

A. When?

Q. Yes.

A. Oh, it started at eight o'clock in the morning, or seven o'clock in the morning.

Q. How many days did you have?

A. One day. [100]

Q. One day annual leave? A. Yes, sir.

Q. And that was the day you went and got the pick-up from George Nehrbus and went out to get the scrap?
A. Yes, sir.

Q. What day of the month and what month was it that your annual leave became due?

(Testimony of Andrew Jackson Hall.)

A. You get a day of annual leave any day you wish, sir, if you have any annual leave built up. You can ask for even half a day annual leave, regardless of when it comes due, if you have some accumulated. You can get annual leave by applying for it.

Q. You spent one day of annual leave by going and hiring a truck to go back out to the place where you were working?

A. That's right, to pick up some stuff that I wanted for my own personal benefit.

Q. Now, that stuff that you brought in by the truck you had rented from Mr. Nehrbas, could you have brought that in when you were driving back and forth with Mr. Cutting?

A. Well, I could have, yes.

Q. But you spent \$7.50 to go get a truck to do it on your day off, isn't that right?

A. Well, I wanted to do a little running around otherwise and carry some stuff out to Slater Camp, some stuff I bought. I used the truck for other things, too.

Q. Where did you do this running around? You say you went out to [101] Satellite Field, and then you parked the truck, and it was five thirty when you parked the truck.

Mr. Arend: We object to that, your Honor, as irrelevant to any issue in this case.

The Court: Objection overruled.

A. I don't remember any particular place. I went out to Slater Camp, took my wife to town, and she did some shopping.

(Testimony of Andrew Jackson Hall.)

Q. That was in the forenoon?

A. No, that was after six o'clock.

Q. I thought you stated awhile ago that you had taken the truck back to Mr. Nehrbas after you unloaded this material?

A. I went over to Slater Camp and turned the truck in at possibly eight o'clock that night; that is the best I remember.

Q. Well, now, Mr. Hall, is that the stove that was placed in the Veterans of Foreign Wars' building in that room that you have described?

A. I can only say it is similar to the stove. I didn't check any numbers. I don't have any positive way of identifying the stove or refrigerator.

Q. There was no other stove in that particular building, that Veterans of Foreign Wars' building, when you put this range in there?

A. No, sir.

Q. I believe you testified later that at the request of Mrs. Cutting—I believe she was Mrs. Cutting then—you crated [102] up a stove and refrigerator?

A. Yes, sir.

Q. And you made the crates yourself?

A. Yes, sir.

Q. Where did you crate the refrigerator?

A. In the passageway there, where the—where we had left it.

Q. And did you pack these exhibits, certain exhibits that have been marked for identification here, in that refrigerator?

A. I did.

Q. And was that the refrigerator that had been brought from Satellite Field?

A. Yes, it was the same refrigerator.

(Testimony of Andrew Jackson Hall.)

Q. Had you been maintaining your shop in that building all of the time up until that time?

A. That's right. I was in there almost every night doing some work.

Q. And the refrigerator was in the hallway leading back to your shop all of the time?

A. Yes, sir.

Q. Then you went down to this other place, and you crated the stove up there- You crated the range down at the other place?

A. That's right.

Q. Was there any other material or supplies or property of Mr. and Mrs. Cutting that was in that room down where you put the range? [103]

A. No, I think not.

Q. Did you take the lumber down there to make the crate? A. Yes, sir.

Q. And the crate marked as an exhibit is the crate that you made for the stove?

A. Yes, sir. I can definitely identify the crate.

Q. How do you identify that crate, Mr. Hall?

A. Because I recognize some of the defects in the workmanship there. The pieces didn't exactly fit, and the corners are not fitted together good. I just recognize the workmanship, as the boards are nailed together. And then on the refrigerator, on the back part of the crate on that, if you will notice, it is painted black with the white lines in it, which was a piece of plyboard that had been used for a chart of some kind.

(Testimony of Andrew Jackson Hall.)

Q. Now, did you, after you crated those things up, did you help load them? A. No, sir.

Q. Did you mark the address on those boxes, who they were to go to? A. No, sir.

Q. Who did that? A. I don't know, sir.

Q. Now, going back a little bit, when you took—you say you took the range and the refrigerator upstairs the first time. Who was living up there? [104]

A. Well, no one was living up there at the time.

Q. Who had charge of the place at that time?

A. Well, you mean the apartment upstairs?

Q. Yes.

A. Well, Mrs. Cutting, I believe, and also Mr. Cutting was doing some work up there building that.

Q. That was in May, you said, of '45?

A. May or June—somewhere around there.

Q. Mrs. Cutting had that part of the building?

A. It was Mrs. Henderson.

Q. And when did she become Mrs. Cutting?

A. I don't know. I don't remember the date.

Q. Were you at the wedding, Mr. Hall?

A. Yes, sir.

Q. And you don't remember when it took place, or approximately when it took place?

A. I wouldn't say. August or September, I believe—maybe September.

Q. And you are positive, Mr. Hall, that this range here is a range similar to the one that you hauled over to that house?

(Testimony of Andrew Jackson Hall.)

A. It is the range or one similar. I wouldn't say it was the same one, but it is like the one.

Q. Is the oven in the same place?

A. Yes, sir.

Q. And the other drawer in the same place?

A. Yes, it is. That's right.

Mr. Taylor: If the Court please, could we have a short recess?

(A ten-minute recess was declared, after which court was duly reconvened. All members of the jury were present.)

Q. (By Mr. Taylor): Mr. Hall, according to your statements here, you had handled this range quite a number of times, had you not?

A. Yes, sir.

Q. How many burners are on that range, Mr. Hall?

A. Well, I believe there are three open-face burners, and possibly one for water, is the best I can remember.

Q. How many knobs; how many switches?

A. Well, there would be five, including the one that controls the oven, I think.

Q. Now, going back a little ways, prior to the first time that you hauled the range in, had you any talk with Joseph Lymp and Charles Cors about this matter, about this stove and refrigerator?

A. No.

Q. Or any talk about property that was on the base?

(Testimony of Andrew Jackson Hall.)

A. No, I don't remember ever talking to them about the government property or anything in particular.

Q. How did you happen to know that you were to meet them at Satellite Field at the day that you hauled it in? [106]

A. I didn't know I was to meet them there. The way I understood it, they were hauling all these extra stoves that was out there and not being used; several days there they were carrying them to Ladd Field; they were surplus and at the time there they—I gathered Mr. Cutting just decided at that time, well, that would be a good time to take them in.

Q. Was that the time they were cleaning off Satellite Field to abandon it or vacate it?

A. No. There was nothing I know that was ever brought up about closing the field down. At that time they were just clearing up a lot of surplus around there, as well as Big Delta and Northway.

Q. They were moving all that stuff to Ladd Field at that time?

A. The surplus—some part of the surplus, yes.

Q. Now, when you rented the truck from George Nehrbas—you say it was possibly a three-quarter ton Ford pick-up?

A. It could have been that, yes.

Q. What was the color of that truck?

A. I don't remember.

Q. Black?

A. I don't think it was black. It might have been red. I don't remember. I wouldn't say on the color.

(Testimony of Andrew Jackson Hall.)

Q. And you are positive, then, that you had no previous conversation with Mr. Cors and Mr. Lymp prior to picking up the refrigerator and the stove the first time? [107]

A. No, I hadn't planned anything on it, no, sir.

Q. Now, when you got on that road and turned off it, how many did it take to move the stove from one truck to the other?

A. Oh, I guess it was—the fact is that I don't think I did any of the moving there. I think possibly Chuck and Joe set it over on the other truck. I am not sure. I believe those two fellers did the actual transferring of it over to the truck.

Q. Three fellows or two fellows, did you say?

A. Yes, I think so. I might have helped them a little bit.

Q. Mr. Hall, since you and Mr. Cors and Mr. Lymp had that transaction out there of taking that stove and refrigerator down and switching it, have you ever talked with those men since that time?

A. Oh, I talked with them since, sure. I worked with them and went to the show with them probably. Around town I have talked with them, and when I seen them on the street.

Q. After you found out there was an investigation on, did you talk to them after that?

A. In regards to the stove and refrigerator?

Q. Yes.

A. No, I don't believe that—I don't recall any conversation about the—because Joe Lymp was away and he didn't—he wasn't working out there

(Testimony of Andrew Jackson Hall.)

any more and Chuck was back at Ladd Field, and I didn't come in contact with them very much after the investigation. [108]

Q. How long after that did Mr. Lymp go away, after you moved the stove and the refrigerator?

A. Maybe two or three months.

Q. Between the time you moved that and the time he went away, you had had several conversations with him?

A. I talked with them around work, sure, that's right.

Q. And you had some talks about these particular items?

A. No, I don't remember having any conversation afterwards concerning the stove and refrigerator.

Q. Did you have any conversations about any material that was brought in from the base, from Satellite Field?

A. No, I didn't discuss it with them.

Q. You weren't quite sure of the time that Mr. Baskin came down to the shop to see you. You say it was in the summer of 1945, is that right?

A. Yes, it was in 1945, approximately in the early part of the summer, I believe.

Q. Early part of the summer?

A. I think so.

Q. Then after Mr. Baskin came down there and talked to you and took your motors, you told him all about this transaction that you have testified to here; is that right?

(Testimony of Andrew Jackson Hall.)

A. It was some time after. It wasn't the same day.

Q. It was after he had had the motors for some time, was it?

A. Yes. He approached me on a number of different occasions. [109]

Q. He approached you on different occasions?

A. Or at other times, yes.

Q. And you stated that when Mr. Baskin came there, you felt it was your duty to tell him the truth, tell him how everything had happened; is that right?

A. I felt it my duty to answer the questions he asked me, yes, sir.

Q. Well, Mr. Hall, didn't you feel it was your duty at the time this took place to tell the authorities?

A. Well, along at the beginning of that time, I wasn't sure but what the stove belonged to him; I don't know; there was a lot of material out there. Some of the fellers had bought furniture, beds, and so forth, from M. K., and I know there was some stoves out there. There was a wood and coal range out there that belonged to a private party that was sold to somebody else. A lot of the fellers lived out there; they had their own personal furniture, stoves, and bedding, and things like that. There was transactions going on all of the time.

Q. Mr. Hall, didn't you believe that stuff was hot when you went four miles down from the camp and put it on your truck four miles away?

(Testimony of Andrew Jackson Hall.)

A. Yes, sir, it looked very suspicious to me.

Q. Still you didn't tell the authorities about it at that time? A. No.

Q. You didn't tell them about it until they had caught you with four hot motors? [110]

A. The motors weren't hot motors, so far as I understand today. The motors were all right. The motors didn't have anything whatever to do with it.

Q. You found out they were hot and you took them back to Satellite Field? A. No, sir.

Q. What?

A. No, sir. These motors that——

Q. (Interposing): No, not the motors. I am talking about these other things. You knew they were hot?

A. No, I didn't know they were hot. It looked like it to me. It was very suspicious, but I was just helping him, doing what he said to do under his orders.

Q. But you helped take them back to Satellite Field? A. Yes, sir, I helped then.

Q. And later, knowing they were hot and taken back to Satellite Field, you helped haul them back in again; is that right?

A. He asked me if I would help take the stove and refrigerator back to town, and he said, "I might as well have that stove and refrigerator."

Q. And, in spite of the fact that you thought they were hot, you still helped bring them back in?

A. That's right.

(Testimony of Andrew Jackson Hall.)

Q. And in spite of their being hot, you crated them up and shipped them to Anchorage? [111]

A. I didn't ship them to Anchorage.

Q. You crated them up.

A. When he asked me to do so.

Q. Did Mr. Cutting ask you to crate them?

A. Yes. He asked me one time and Mrs. Cutting asked me the other day. When I didn't do it for a few days, she asked me again.

Q. When did Mr. Cutting ask you to crate the stove? A. When?

Q. Yes. When did they go to Anchorage?

A. I don't remember the date.

Q. September?

A. No. October, I think—the latter part of October.

Q. The first of November?

A. It could have been.

Q. That was approximately the time that you crated them up, then?

A. Yes, shortly before they left.

Q. Isn't it a fact that Mr. Cutting was in Anchorage at the time you crated these things?

A. Yes. After I hadn't crated them for a week or two, she asked me again when I was going to crate them.

Q. Now, going back a little bit, when did you do the job at Mark Sells', Mr. Hall?

A. I don't remember. The summer of 1945.

Q. And was you in partnership with Mr. Cutting at that time in the electrical shop? [112]

A. Yes.

(Testimony of Andrew Jackson Hall.)

Q. How much did that job come to down there?

A. I don't remember. Probably—maybe \$125.00, something like that.

Q. And did you give Mr. Cutting his share of that \$125.00?

A. Yes, sir.

Q. How did you pay him?

A. Well, usually he paid me—Mrs. Cutting would. I would submit a little statement to her. I would give a little itemized account of what the job amounted to, how many hours I had put in and material used on the job. She would type it out and send it out, and the check would come to their post office box, and he would give me the check, and most of the time she would cash the check, and we would determine which part would be to me and which part to her, and we would divide it right there.

Q. How was those checks made out?

A. Cutting and Hall.

Q. And Mrs. Cutting would sign those, endorse them?

A. Mr. Cutting usually endorsed the checks. He would endorse the checks as Cutting and Hall, by P. J. Cutting, and I would get my part of the check.

Q. Did Mr. Cutting get half of that \$125.00?

A. No, I don't remember if he got half of it. He got part of it, compensation for the materials, and so forth. I wouldn't say [113] that he got half of it. I don't remember, but I don't think he got half of it, though.

(Testimony of Andrew Jackson Hall.)

Q. Did you authorize Mrs. Cutting to endorse the checks payable to the partnership of Hall and Cutting?

A. No. No, I don't think—she wasn't authorized to endorse the checks, no, sir.

Q. Now, isn't it a fact, Mr. Hall, that that partnership continued for only a couple of weeks?

A. No. It must have continued longer than that, because I know all along he got part of the money out of my work for all of that summer and even into the fall of '45.

Q. Isn't it a fact that the partnership was discontinued at the time that the four motors was taken from you by Mr. Baskin?

A. No. He might have considered it on his part that it was, but he still received compensation for the jobs that was done. I know that even after he left here, he got money from some of the jobs that was done.

Q. How did you pay him for his share in those jobs: checks or cash?

A. Well, you mean after he left here?

Q. Yes. You say after he left he still paid you?

A. Well, there was one job—there was one job that the feller had just neglected paying his bill. When she was up here, then, on a visit here, she went around to this party and collected it and gave me my part of the check. I don't know who [114] signed that check or how it was paid, but I know that she sent me, by another party, some money in an envelope.

(Testimony of Andrew Jackson Hall.)

Q. What job was that?

A. It was a job down at the Fairbanks Cold Storage.

Q. How much did it amount to?

A. Well, the job amounted to about, I think, \$185.00.

Q. Now, you don't remember the date that the motors were taken from you by Mr. Baskin; is that right?

A. No, I don't remember the date.

Q. How many jobs did you do after those motors were taken?

A. I am doing jobs right along. Now, I work every——

Q. (Interposing): No. I mean up until the time that Mr. Cutting went away.

A. I don't remember how many jobs we did.

Q. Were you working at Ladd Field, too?

A. I was working at Satellite Field, and Sundays and holidays and evenings I was doing small jobs.

Q. And you don't know how many you did do?

A. No. It might have been fifteen, twenty, jobs, maybe.

Q. Mr. Hall, have you ever been convicted of a crime?

A. No, sir.

Q. Never?

A. I have never been convicted of a crime, sir.

Mr. Taylor: That is all, Mr. Hall. [115]

(Testimony of Andrew Jackson Hall.)

Redirect Examination

By Mr. Arend:

Q. You told Mr. Taylor that at the time you were loading this scrap onto your pick-up, in the spring of 1945 at Satellite Field, another truck in charge of Lymp and Cors was also loading the refrigerator and range. Why didn't you load the refrigerator and range directly onto your pick-up while you were on Satellite?

A. Well, at this time the M.P.s at the gate were checking pretty closely the property that was going out, and I gathered he didn't want the M.P.s at the gate to know that this range and refrigerator would be on this private car, and it was to make it look like the range and refrigerator was going to Ladd Field with the other things that were going to Ladd Field.

Q. What was Mr. Cutting's relationship to you on the job at Satellite Field?

A. Well, he was my foreman, my supervisor.

Q. You took orders from him, did you?

A. Yes, sir.

Q. Now, is there only one time in the spring of 1945 that you rented this pick-up from Nehrbas?

A. That's right, sir.

Q. Did Mr. Cutting ever mention to you any tally out sheets for the refrigerator and range to get them off Satellite Field?

A. You mean when we started to bring them out? [116]

Q. At any time, before or after.

(Testimony of Andrew Jackson Hall.)

A. There was a question of a tally out sheet concerning the stove and refrigerator, yes, after he had gone to Anchorage.

Q. Where did this conversation occur?

A. Well, Mrs. Cutting approached me——

Q. (Interposing): No, I am talking now about Mr. Cutting regarding tally out sheets.

Mr. Taylor: Will you please read the question?

(The question was read by the reporter:
Where did this conversation occur?)

Mr. Taylor: We object to it until the proper foundation is laid. I also believe it is improper redirect examination.

The Court: Objection overruled.

Q. (By Mr. Arend): Just tell us, now, where this occurred, this conversation between you and Mr. Cutting? A. At Ladd Field, sir.

Q. When? A. In July, 1946.

Q. All right. What was said regarding tally out sheets?

A. He just asked me what I did with the tally out sheets that he sent up here to be placed in the files at Satellite Field?

Q. Do you know anything about such tally out sheets?

A. Yes, I did receive some tally out sheets.

Q. What did you do with them?

A. Well, I gave them to Mr. Baskin. [117]

Q. Did you ever make a written statement to Mr. Baskin regarding the interviews he had with you, covering the interviews that he had had with you, a signed statement

(Testimony of Andrew Jackson Hall.)

A. I signed a—let's see—I don't believe I understand exactly.

Q. Did you ever put anything in writing about what you have testified to here?

A. No, sir, I never wrote anything to Mr. Baskin.

Q. Did you ever sign a statement for him?

A. Yes, I signed a statement for Mr. Baskin.

Q. Did you ever sign a statement for him?

A. Yes, I signed a statement for Mr. Baskin.

Q. You mean you didn't write out the statement? A. No, sir.

Q. Has Mr. Cutting ever complained to you about a back injury of his?

A. Not directly to me. I have heard him mention it.

Mr. McCutcheon: I object to it as improper re-direct examination, your Honor.

Mr. Arend: Your Honor, there has been a lot of testimony about these two men lifting this refrigerator and range.

Mr. McCutcheon: There hasn't been any testimony about a back injury, your Honor.

The Court: Objection overruled.

Mr. McCutcheon: Exception.

A. I remember—I remember hearing him mention that his back was injured in a plane accident, yes, sir. [118]

Q. Have you ever seen him exert himself unduly physically other than the times that you have

the first time

(Testimony of Andrew Jackson Hall.)

testified to him helping you lift this range and refrigerator, identification numbers 2 and 3 of the government?

Mr. McCutcheon: We make the same objection, your Honor.

The Court: All right, I will sustain it.

Q. How much do you weigh, Mr. Hall?

A. About two hundred pounds.

Q. How tall are you?

A. About six feet.

Q. Is Mr. Cutting a bigger or smaller man than you are?

A. He is larger, I believe, than I am.

Mr. Arend: Now, if the Court please, we ask permission to have Mr. Hall and Mr. Berrett carry the range and the refrigerator for evidence before the jury.

Mr. Taylor: We object to it, your Honor.

The Court: All right, go ahead.

(The range and refrigerator were lifted and carried by Mr. Hall and Mr. Berrett.)

Mr. Arend: Now, your Honor, I would like to have the record show that the witness, Andrew Jackson Hall, and Mr. William E. Berrett, who is about the same size as the witness, carried the range and the refrigerator.

The Court: Perhaps you had better ask the witness and have him testify. [119]

Q. (By Mr. Arend): Mr. Hall, were you able with the assistance of Mr. Berrett to carry the range?

A. Yes, sir.

(Testimony of Andrew Jackson Hall.)

Q. Here in the courtroom? A. Yes, sir.

Q. Were you able, with the assistance of Mr. Berrett, to carry the refrigerator here in the courtroom? A. Yes, sir.

Q. How does Mr. Berrett compare with you in size and weight?

A. Well, I believe I am a little heavier than he is, sir.

Q. Who asked you the first time to crate the range and the refrigerator?

A. Mr. Cutting.

Mr. Arend: That is all.

Mr. Taylor: That is all.

(Witness excused.) [120]

DENNY G. BREID

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. Denny G. Breid.

Q. Where do you reside, Mr. Breid?

A. 611 Fifth.

Q. Here in Fairbanks? A. Fairbanks.

Q. Where are you employed?

A. Ladd Field.

Q. What position do you hold there?

A. I am chief of supply, of Post Engineers Supply.

(Testimony of Denny G. Breaid.)

Q. Mr. Breaid, can you state as to whether or not the government has ever owned any Westinghouse refrigerators or ranges at Ladd Field?

A. Oh, yes. The Engineers have had just about every make and type.

Q. Can you state whether any Westinghouse electric refrigerators or ranges have ever been turned over to surplus property for disposal to persons other than the army personnel?

A. Well, to the best of my knowledge, I would say that they haven't [121] because there has always been a shortage.

Q. And what other method would there be of disposing of such equipment at Ladd Field to persons other than army personnel?

A. Well, the only way that it could possibly be disposed of would be that, during the war with the shortage of replacement parts, that, say, if a stove is damaged or is worn out or part of it is broken, well, if they have a replacement, they will replace the unit with another unit and then take that back to a warehouse, and that in turn, if the parts are not available, then that is taken down finally and put into the salvage, turned over to the salvage officer for his disposal. We don't control that.

Q. You don't control that? A. No.

Q. And that would be if something were damaged on the equipment and you had no replacements?

A. That's right. It wouldn't necessarily mean that it would have to be damaged. Say, if on a

(Testimony of Denny G. Braid.)

stove if, say, one of the burners is out and if the burner is necessary and if they can't get the parts, the stove as a whole is useless.

Q. Would any usable property of that type be turned over to salvage? A. Well, usually not.

Mr. Arend: You may cross-examine.

Mr. Taylor: No cross-examination.

(Witness excused.) [122]

HOWARD N. FOWLER

called as a witness on behalf of the plaintiff, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your full name, please.

A. Howard N. Fowler.

Q. Where do you live, Mr. Fowler?

A. Anchorage.

Q. What is your address there?

A. 214 Fifth.

Q. Have you always lived there?

A. I have been there for about six years in the same house.

Q. Are you acquainted with Mr. Cutting, the defendant here? A. Yes.

Q. Percy J. Cutting? A. I am.

Q. How long have you known him?

A. About three years.

(Testimony of Howard N. Fowler.)

Q. Did you have a conversation with Mr. Cutting at Anchorage on or about the 20th day of November, 1945, relative to plywood crates, boxes?

A. Yes.

Q. Who was present when you were talking to him? State if you can? [123]

A. I think he was over at my house when we talked about it, as I recall, but I don't know whether my wife was there or not. I can't recall. We were in the house, I am pretty sure, as I remember it.

Q. Can you state whether Mrs. Cutting was there?

A. No, she wasn't there at the house.

Q. And what was the conversation?

A. He said he had some boxes of household goods that he would like to store temporarily until he found a place to live and that he was figuring on moving to the post and that, if he did accept this house out there, that he didn't want to take them with him and asked if I could store them for him at my place temporarily until he got squared around, and I said that I would.

Q. What did you do after the conversation?

A. How do you mean that, sir?

Q. Did you do anything about the conversation, after you completed the conversation?

A. Not right then. I think it was the next day that we moved the stuff.

Q. What did you move?

(Testimony of Howard N. Fowler.)

A. Well, we had two good sized boxes, and I brought them up and put them in a little storage house that I have there.

Q. Where is that storage house?

A. It is on the back of my lot. It is a place where I store all [124] my own excess stuff.

Q. How long did the boxes remain there?

A. Oh, I imagine a couple of weeks or more, as I recall.

Q. Do you know what happened to them then?

A. Well, they were taken away from there.

Q. By whom?

A. By the F.B.I. agents. They came over and took them away.

Q. Did you know what the boxes contained at the time you helped move them,

A. No, I didn't.

Q. Do you know now what they contained?

A. I did when they came to move them.

Q. Can you state the time when the F.B.I. came to move the boxes, approximately?

A. It was in the afternoon, if that is what you mean.

Q. I would like the month and the day, if it is possible, and the year.

A. As I recall—I don't recall the date, but it was around approximately a couple of weeks after they were put in there.

Q. That would be in December?

A. That would be in December some time, yes.

Q. How did you discover the contents then?

(Testimony of Howard N. Fowler.)

A. Well, they came over and opened them up, and I happened to be on my way to work, and I was present when they took the top off of the boxes.

Q. And what was in the boxes?

A. Well, there was a refrigerator in one and a stove in the other.

Q. Did you give the officers permission to open the boxes? A. Yes, sir.

Q. Did you give them permission to take them away? A. Yes.

Q. Mr. Fowler, I would like to have you step down here and examine government's Identifications 6 and 7, being two plywood boxes, crates.

(The witness examined the above-mentioned identifications.)

Q. Are these the crates you have testified about?

A. Well, they look like it.

Q. Then, will you examine identifications 2 and 3, being a range and refrigerator? Are those two items the range and refrigerator that you have just testified about?

A. Well, I don't know. They were in the box. Just the lid was off of the box, but they were white in color.

Q. You may take the stand again.

(The witness returned to the witness stand.)

Mr. Arend: You may cross-examine.

(Testimony of Howard N. Fowler.)

Cross-Examination

By Mr. Taylor:

Q. Mr. Fowler, I didn't get just exactly the date that you say you saw Mr. Cutting in Anchorage and had a conversation about these boxes. [126]

A. Well, it was approximately the 7th of December, as I recall.

Q. The early part of December?

A. The early part of December some time.

Q. And the reason you state— believe you stated there was a reason Mr. Cutting stored them. Was it that he was going to the base and had a place to live at the base; is that right?

A. He was unsettled at that time, and he didn't want to have to move them several times, he said, until he was definitely established.

Q. Were there some boxes besides these?

A. No, not at my place. It was just the two. I had just barely room enough for the two.

Q. What kind of a building was it that you stored them in?

A. Originally it was a tent house, and I boarded it up.

Q. And did the F.B.I. men ask for permission to go in there? A. Yes, they did.

Q. And after they went in, what did they do?

A. Well, they brought the boxes out in the yard and took the lids off of them.

Q. And did they put them back then?

A. Yes, they did, and then they called for them later.

(Testimony of Howard N. Fowler.)

Q. They put them back into your building. The time that they opened these boxes belonging to Mr. Cutting, did they serve a search warrant on you for permission to open those boxes?

A. No, they didn't. [127]

Q. Did you give them permission to open boxes belonging to Mr. Cutting?

A. Yes. They were on my property, and I felt I could give them permission. I knew that they could make arrangements pretty quick if I didn't give them permission.

Mr. Taylor: That is all, Mr. Fowler.

Mr. Arend: That is all.

(Witness excused.) [128]

Mr. Arend: Your Honor, I would like to have permission to recall the witness Zobel for two questions.

The Court: Very well.

BERNARD J. ZOBEL

called as a witness on behalf of the plaintiff, having been previously sworn, was examined further and testified as follows:

Direct Examination

By Mr. Arend:

Q. Mr. Zobel, yesterday you told the jury that you hauled a range and a refrigerator from Ladd Field to Satellite Field at the request—well, I will say and placed them in a stout house at Satellite Field? A. That's right.

(Testimony of Bernard J. Zobel.)

Q. Where did you get those two items at Ladd Field?

A. They came from the building that was commonly called the Engineers' Building. I think it is generally recognized as building 172. It is the building with four wings to it.

Q. Which wing did you take them from?

A. It was from the electrical, the part having the electrical supplies, I believe, and that would be the second wing from the east side.

Q. You also stated that you used the range and refrigerator some while you were there at Satellite?

A. Well, I believe I mentioned I was one of a group, and we were [129] more or less batching out there.

Q. Was the range in usable condition?

A. Yes, I think so.

Q. Was the refrigerator?

A. Yes, I think so.

Mr. Arend: That is all.

Mr. Taylor: No questions.

(Witness excused.)

The Court: In a few seconds, we will take an adjournment until two o'clock. In the meantime, Ladies and Gentlemen of the Jury, remember don't talk about the case to anyone or permit anyone to talk about the case to you. Keep your mind perfectly free from an opinion until the case is finally submitted to you.

(Thereupon an adjournment was taken until two o'clock p.m., November 13, 1946, at which time court was duly reconvened. All members of the jury were present, and the following proceedings took place:)

The Court: Are counsel ready to proceed?

Mr. Arend: Ready, your Honor.

Mr. Taylor: Ready.

Mr. Arend: If the Court please, there is a stipulation on file in this case, signed by counsel for both parties, agreeing that the deposition of the government's witness, Leo Hardy, be taken and used at the trial of this case. The [130] commission was issued, and it has been returned. The deposition is on file likewise. May we have permission to read it at this time?

The Court: Read your stipulation first.

Mr. Arend: "In the District Court for the Territory of Alaska, Fourth Judicial Division. United States of America vs. Percy James Cutting. No. 1268 Cr. Stipulation to Take Deposition.

"It is hereby stipulated by and between Harry O. Arend, United States Attorney, and Warren A. Taylor, attorney for the defendant, Percy James Cutting, that the deposition of Leo Hardy, witness Mary McDonnell, a Notary Public in and for the Territory of Alaska, at Fairbanks, Alaska, at 10:00 o'clock, a.m., on October 30, 1946, or at such other time or times as may be agreed upon between said attorneys, said depositions to be taken upon oral examination and when returned and published may

be read by either party at the trial of the above entitled criminal cause.

“Dated at Fairbanks, Alaska, this 29th day of October, 1946.

/s/ HARRY O. AREND,

United States Attorney,

/s/ WARREN A. TAYLOR,

Attorney for Defendant.”

“Filed in the District Court, Territory of Alaska, 4th Division, October 29, 1946, John B. Hall, Clerk, By Olga T. Steger, Deputy.”

Mr. Arend: Will counsel waive the reading of the commission?

Mr. Taylor: Yes, I will.

(Said commission is in words and figures as follows, to wit:)

“In the District Court for the Territory of Alaska, Fourth Judicial Division.

“United States of America vs. Percy James Cutting, No. 1268 Cr.

“Commission to Take Deposition.

“The President of the United States of America:

“To Mary McDonnell, a Notary Public in and for the Territory of Alaska, residing at Fairbanks therein:

“Whereas, the above named plaintiff and defendant have, by their respective counsel, stipulated and agreed that the deposition of Leo Hardy, a witness for the plaintiff in the above entitled cause, may be taken before you at Fairbanks, Alaska, at 10:00

o'clock a.m., on October 30th, 1946, or at such other time or times as may be agreed upon between you and said attorneys, said depositions to be taken upon oral examination; [132]

“Now, therefore, reposing full confidence in your prudence and fidelity, you, Mary McDonnell, are hereby appointed Commissioner to examine said witness and hereby authorized and required to cause said witness to appear before you at the time and place designated or at such other time or times as may be agreed upon between said attorneys and yourself and diligently examine said witness orally under the oath and affirmation of said witness by you first in that behalf duly administered; and the said testimony of said witness when so taken shall be reduced to writing and signed by said witness and certified by you under your official seal; and the said testimony, together with this Commission, you shall then return to the Clerk of the above entitled Court in a sealed envelope at all convenient speed,

“Witness the Honorable Harry E. Pratt, Judge of the above entitled Court, at Fairbanks, Alaska, this 29th day of October, 1946.

[Court Seal]

/s/ JOHN B. HALL,
Clerk.

By /s/ OLGA T. STEGER,
Deputy Clerk.

“Filed in the District Court, Territory of Alaska, 4th Div., Oct. 31, 1946.

/s/ JOHN B. HALL,
Clerk.”

Mr. Arend: I ask permission for Mr. Berrett to read the deposition, your Honor.

The Court: Very well. [133]

(The deposition of Leo Hardy was read by Mr. Berrett as follows:)

“In the District Court for the Territory of Alaska, Fourth Judicial Division.

“United States of America vs. Percy James Cutting, No. 1268 Cr.

“DEPOSITION OF LEO HARDY.

“Be it remembered that on Wednesday, the 30th day of October, 1946, at the hour of 10:00 o'clock a.m., at Fairbanks, Alaska, there appeared Leo Hardy, a witness on behalf of the plaintiff in the above entitled cause, before Mary McDonnell, a Notary Public in and for the Territory of Alaska, residing at Fairbanks therein; that there were also present Harry O. Arend, United States Attorney, and Warren A. Taylor, Attorney for the defendant, Percy James Cutting.

“Whereupon the following proceedings were had:

“LEO HARDY

called as a witness on behalf of the plaintiff, having been first duly sworn by the commissioner, was examined and testified as follows:

“Direct Examination

“By Mr. Arend:

“Let the record show that both parties reserve the right to object to all questions for relevancy, competence and materiality. [134]

(Deposition of Leo Hardy.)

“Q. State your name and address.

“A. Leo Hardy, 129 Hall Street.

“Q. Fairbanks? A. Fairbanks, Alaska.

“Q. What is your occupation?

“A. Trucker.

“Q. How long have you followed that occupation?

“A. Well, off and on ever since I was twelve years old.

“Q. Do you know Mrs. Audrey Henderson Cutting? A. I just met her once.

“Q. Do you know Percy James Cutting?

“A. No, I don't.

“Q. Did you have any dealings with Mrs. Cutting on November 7, 1945? A. Yes, I did.

“Q. Where at?

“A. Here at Fairbanks, over the telephone.

“Q. State what your dealings were with Mrs. Cutting?

“A. She called me up and said she understood I was making a trip to Anchorage, and wanted to know if I could haul household goods down for her, and I told her that I was merely delivering the truck for the N. C. Company; it was a new truck they were transferring from this store to the store in Anchorage; and I told her she would have to make arrangements with the N. C. Company, and if it was all right with them it was all [135] right with me, that I had nothing to say about it.

“Q. Did you have any further dealings with her?

(Deposition of Leo Hardy.)

“A. Only when I loaded up the goods, she happened to be there and told me what boxes to take.

“Where did you load the goods?

“A. At the Moose Hall, the main entrance and on the ground floor. Two boxes I picked up at the back end of the Vet’s Club.

“Q. Did you know whose goods those were?

“A. They were marked P. J. Cutting; they were all marked in blue crayon.

“Q. How were they wrapped or packed?

“A. They were all crated and boxed, some gasoline boxes, some wooden boxes and some plywood boxes.

“Q. How many plywood boxes were there?

“A. I distinctly remember two; there might have been more; I don’t remember.

“Q. How do you remember those two?

“A. They were quite heavy and after trying to load them by myself we went over to the Fairbanks Cold Storage and got two fellows to help load the two heavy boxes.

“Q. Do you know what those two boxes contained? A. No, I don’t.

“Q. Can you state approximately how much they weighed?

“A. Well, I would say between four and five hundred because all the four of us could do was to lift them up. [136]

“Q. Have you ever moved a Westinghouse electric range?

“A. Yes, I have, from the depot over town.

(Deposition of Leo Hardy.)

“Q. Have you ever moved a Westinghouse electric refrigerator?

“A. I may not have moved a Westinghouse. I moved a General Electric.

“Q. Now, could either of those plyboard boxes have contained an electric range, judging by the weight of the boxes?

“Mr. Taylor: I object to that as calling for a conclusion of the witness.”

Mr. Taylor: We renew the objection at this time, your Honor.

The Court: Objection sustained.

“Q. Could either of the boxes contain an electric range judging by the weight of the boxes?

“A. Judging by the weight, I would say it was heavy enough for an electric range.

“Q. Could one box have contained an electric refrigerator?

“A. Judging by the weight, it could have.

“Q. Were the boxes of the same size?

“A. No, they were different shape.

“Q. What do you mean ‘different shape?’

“A. They weren’t the same dimensions—I mean one was almost square, and the other higher than it was wide and deep.

“Mr. Arend: I would like to have the commissioner mark this object as Plaintiff’s Identification 20, and that the [137] commissioner date and initial the exhibit marked.

(Deposition of Leo Hardy.)

“(Thereupon the object above referred to was marked Plaintiff’s Exhibit 20 for identification.)

“Q. Mr. Hardy, will you take a look at Plaintiff’s Exhibit 20, appearing to be a plywood box; have you ever seen that before?

“A. Well, it looks like the box I hauled.

“Q. That you hauled from where?

“A. From the Moose Hall to Anchorage.

“Q. For Mrs. Cutting? A. Yes.

“Q. They were marked like that?

“A. All of her boxes were marked with blue crayon.

“Q. What marking? What is the markings; what does it say?

“A. P. J. Cutting, Anchorage, Alaska.

“Mr. Arend: I would like to have the commissioner date and initial this box which we ask to have marked Plaintiff’s Identification 21.

“(Thereupon the object above referred to was marked Plaintiff’s Exhibit 21 for identification.)

“Q. Mr. Hardy, will you examine Plaintiff’s Identification 21, appearing to be a plywood box? Have you ever seen that before?

“A. Well, it could be.

“Q. And is that one of the boxes that you moved for Mrs. Cutting from Fairbanks to Anchorage?

(Deposition of Leo Hardy.)

“A. Well, I moved one just like that. It is kind of a bad thing; I don’t know what to say; I can’t say it is the same.

“Q. Did you have any identification marks on the box?

“A. Nothing, absolutely positive. I didn’t pay too much attention to that.

“Q. I call your attention to the blue crayon markings: P. J. Cutting, Anchorage, Alaska.

“A. I looked at all the names on the boxes. There were other boxes of hers. I looked at the markings before I loaded them.

“Q. Did they all have that marking?

“A. Yes, they did.

“Q. What did you do with the two heavy boxes that you testified to? What did you do with the two heavy plywood boxes?

“A. I put them on the truck and hauled them to Anchorage.

“Q. What did you do with them at Anchorage?

“A. I parked in front of the N. C. Company and told Mr. Peterson that Mrs. Cutting would be down in a few days, and he said he could run the truck in the garage and that he would not disturb the crates until she called for it.

“Mr. Arend: That is all.

“Cross-Examination

“By Mr. Taylor:

“Q. Mr. Hardy, what would you say was the date that Mrs. Cutting called you in regard to the boxes that you testified to?

(Deposition of Leo Hardy.)

“A. A few days before the seventh—two or three days before [139] the seventh. I don’t recall just what day she called me on the phone.

“Q. Did you ever meet Mrs. Cutting before personally? A. No, I didn’t.

“Q. How did you know it was Mrs. Cutting talking on the phone?

“A. She told me it was.

“Q. She informed you over the phone it was Mrs. Cutting talking? A. Yes.

“Q. Was it the seventh that you went to the Moose Hall to pick up this load of freight?

“A. Yes.

“Q. You stated in response to a question by Mr. Arend that you picked up two boxes at the Veterans’ Club. Where is the Veteran’s Club?

“A. Just this side of the Glover Tire Shop on Second Avenue.

“Q. Was that where the two boxes marked Plaintiff’s Identification 20 and 21 were?

“A. No.

“Q. Where were they?

“A. At the Moose Hall.

“Q. What did you pick up at the Veteran’s Club?

“A. Two boxes there. I don’t know what they were.

“Q. They weren’t these two boxes we have called your attention to? A. No.

“Q. You say those are quite heavy, Mr. Hardy?

“A. Yes.

(Deposition of Leo Hardy.)

“Q. Who helped you? You said somebody was with you. A. Yes.

“Q. Who?

“A. Jack Gould, who works at the N. C. shipping room. He came down from the N. C. to help me load, and we got two fellows from the Fairbanks Cold Storage; one I think was Perry Cotton.

“Q. Do you know Mr. Hall, an electrician here? Was he the other one?

“A. I don't think so—it could have been. I don't know the men's names, and I can't recall as I don't know him by name.

“Q. Was Mrs. Cutting present when you loaded this freight, the goods you hauled?

“A. She wasn't when I first went down. She showed up after I went down. I loaded a few smaller boxes and she came down.

“Q. She was there when you loaded the two big boxes?

“A. Yes. She came over to the back end of the other place.

“Q. Referring to the two large boxes marked Identification 20 and 21, were they at the Third Avenue—Second Avenue end of the building in front of Mt. McKinley Ice Cream?

“A. No, on the side street. Wickersham, isn't it?

“Q. Yes, it is.

“A. At the side, next to the Cold Storage entrance.

(Deposition of Leo Hardy.)

“Q. I believe you stated in response to a question by Mr. Arend that those are boxes similar in appearance to the ones you loaded down there?

“A. Yes.

“Q. You realize it would be very easy for somebody else to write ‘P. J. Cutting’ on the box?

“A. Yes, it could.

“Q. Upon your arrival at Anchorage, did you see Mr. Cutting? A. No, I didn’t.

“Q. Do you know Mr. Cutting?

“A. No, I don’t.

“Mr. Taylor: I believe that is all.

“Redirect Examination

“By Mr. Arend:

“Q. Did you have any conversation with Mrs. Cutting about the goods you were loading at the time you were actually loading them there?

“A. I suppose I had some, but I can’t think of anything important. I know there was one small box that was heavy, and I went to pick it up and she said to be careful—‘Those are tools in there.’ That is all I can remember off-hand and just passing the time of the day.

“Mr. Arend: That is all.

“Mr. Taylor: That is all.

“/s/ LEO HARDY.

“Subscribed and Sworn to before me this 30th day of October, 1946.

“[Seal] /s/ MARY McDONNELL,

“Notary Public for the Territory of Alaska. My Commission expires June 28, 1950. [142]

(Deposition of Leo Hardy.)

“Certificate of Commissioner

“United States of America,

“Territory of Alaska—ss.

“I, Mary McDonnell, Notary Public in and for the Territory of Alaska, duly appointed as commissioner to take the deposition of Leo Hardy, a witness for the plaintiff in the above-entitled action, and pursuant to the foregoing commission, do hereby certify that on the 30th day of October, 1946, before me at Fairbanks, Alaska, personally appeared the said witness, Leo Hardy, to me known and known to me to be the witness described in the said Commission, and thereupon said witness was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that, as the said testimony was taken by me, it was reduced to writing, and when concluded, the said testimony was read to said witness who signed the same, and made oath to the same as being true in all respects; and each of the answers to said interrogatories propounded to said witness as hereinabove set forth is the exact testimony given by said witness before me as commissioner to take said testimony, and the whole thereof.

“In Witness Whereof, I have hereunto set my hand and affixed my official seal this 30th day of October, 1946.

“[Seal] /s/ MARY McDONNELL,

“Notary Public for the Territory of Alaska. My Commission expires June 28, 1950.” [143]

Mr. Taylor: If the Court please, just to keep the record straight, I believe we have these two boxes marked for identification, I believe six and seven, and we also have them marked 20 and 21.

Mr. Arend: Well, then, we would like to have the record show that the commissioner's Identification No. 20 is the Plaintiff's Identification No. 7 in this case. That is the refrigerator box.

The Court: Very well.

Mr. Arend: And the commissioner's Identification No. 21 is the plaintiff's Identification No. 6 in this case.

The Court: Very well.

Mr. Taylor: I just did that so there wouldn't be any cross-reference to it, your Honor. I didn't want to be technical about it. [144]

STANLEY D. BASKIN

called as a witness on behalf of the plaintiff, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. Will you please state your name?

A. Stanley D. Baskin.

Q. Where is your residence?

A. Huntsville, Texas.

Q. What is your occupation?

A. I am an attorney.

Q. What was your occupation in 1945?

(Testimony of Stanley D. Baskin.)

A. I was a special agent of the Federal Bureau of Investigation.

Q. Where were you stationed at that time?

A. Fairbanks, Alaska.

Q. Are you acquainted with the defendant, Percy James Cutting, sitting here at the table?

A. I am.

Q. And do you know Audrey Henderson Cutting, his wife? A. I do.

Q. Did you have a conversation with Mr. Cutting on December 6, 1945, relative to a Westinghouse electric range and electric refrigerator?

A. I did. [145]

Mr. Taylor: Just a moment. What was the date, Mr. Arend?

Mr. Arend: December 6, 1945.

Q. (By Mr. Arend): Where did the conversation take place?

A. In the office of the Federal Bureau of Investigation at Anchorage, Alaska.

Q. Who was present?

A. Percy James Cutting, Hugh C. Norton, the special agent of the F.B.I., and myself.

Q. And did you and Mr. Norton identify yourselves to Mr. Cutting at that time?

A. We identified ourselves as special agents of the Federal Bureau of Investigation.

Q. Was the conversation reduced to writing?

A. No, it wasn't.

Q. What was said in the conversation?

(Testimony of Stanley D. Baskin.)

A. I informed Mr. Cutting that anything he stated could be used against him and that he did not have to make any kind of a statement. I interviewed him regarding the Westinghouse refrigerator and Westinghouse electric range, and I asked him if he did not, on or about May 18, 1945, have Joe Lymp and Andrew Hall take a refrigerator, the Westinghouse refrigerator and electric range, from Satellite Field to Fairbanks, Alaska; he said that he didn't. I asked him further if he ever had a Westinghouse electric range or refrigerator in the Moose Hall, in his apartment in the Moose Hall, and he stated that he had not. I further asked him if Andrew Hall ever crated a range or refrigerator, a Westinghouse range or refrigerator, for him on or about November 1, 1945, and he stated that he did not. I asked him if the Northern Commercial Company, through its agent, Mr. Hardy, took *any* of his Westinghouse range or refrigerator from Fairbanks to Anchorage, Alaska, and if that was part of his personal effects, and he said that it wasn't. I also asked him, along with Mr. Hugh Norton, if, on November 20, 1945, he did not take two boxes from the Northern Commercial Company warehouse in Anchorage to a little cabin at the rear of Mr. Howard Fowler's home at 214 Fifth Avenue in Anchorage, and he stated that he did not. I also asked Mr. Cutting if he had any receipts or any bills of sales or other documents that would show he was the owner of or had purchased or obtained a Westinghouse electric range or refrigera-

(Testimony of Stanley D. Baskin.)

tor, and he said that he did not. Throughout the interview he consistently denied he had any information regarding a Westinghouse refrigerator or Westinghouse range.

Q. Did you have a conversation with Mr. Cutting at any other place on that day?

A. On the same day, about nine o'clock, I asked him if he would permit——

Q. (Interposing) Just a minute. Now, where was that?

A. That was in the office of the F. B. I. I asked Mr. Cutting if he would permit Mr. Norton and I to search his home, which he said that we could. We then went to his residence at 733 Fifth Avenue, where we met Mrs. Cutting, and we searched his residence, and we did not find a range or refrigerator there.

Q. Did you have any conversation with Mrs. Cutting there at that time? A. We did.

Q. Was Mr. Cutting present? A. He was.

Q. All right. And what was said in that conversation?

A. I asked Mrs. Cutting if she had an electric range or Westinghouse refrigerator at Fairbanks, Alaska, and if it was in their apartment in the Moose Hall, and her first statement was, "Why do you ask about a range or refrigerator," and she declined to answer my questions for a few minutes, and finally stated that she didn't know anything about one; that she had never had a range or refrigerator in her apartment in the Moose Hall.

(Testimony of Stanley D. Baskin.)

She said the only thing she had up there was a little hot plate. I also asked her if she had any invoices or bills of sale or documents showing that she owned a refrigerator or an electric range, and she could not produce any; she said she did not have any; the only thing that she did produce was an invoice of five pieces of celotex that she had purchased from the Independent Lumber Company in Fairbanks; it was dated April 23, 1945. She also showed me that she had some household stuff in a cupboard and stated that she needed a range and didn't have one, or rather, a refrigerator and didn't have one.

Q. Now, Mr. Baskin, will you please step down here and examine Government's Identifications 2 and 3, being two plyboard boxes. I am sorry, six and seven, Government's Identifications 6 and 7.

A. Those are——

Q. (Interposing): Just a minute. And will you also, while you are down here, please examine Government's Identifications 2 and 3, being a range and refrigerator. And while you are down here, will you also examine Government's Identification 8, being a pair of boots, and No. 9, being a pack sack, and No. 10, being a pair of leather pants.

(The above-mentioned identifications were examined by the witness.)

Q. Now, you may take the stand again. Have you ever seen Identifications 6 and 7 before, the boxes?

A. Yes.

(Testimony of Stanley D. Baskin.)

Q. When and where?

A. I saw those on December 7, 1945, and in a cabin behind Mr. Howard Fowler's home at 214 Fifth Avenue, Anchorage, Alaska.

Q. Have you ever seen Identifications 2 and 3 before, the range and refrigerator? A. Yes.

Q. Where did you see them? [149]

A. I examined them at the same time that I saw the boxes.

Q. Where were they?

A. They were inside those crates, those boxes there, that is, those exhibits 6 and 7.

Q. Did you obtain anyone's permission to examine the contents of the boxes?

A. I obtained the permission of Mr. Howard Fowler.

Q. Did he identify himself to you?

A. Yes, he told us who he was; that his name was Howard Fowler. That is, we obtained the permission of Mr. Fowler and his wife, Mrs. Fowler, both of them together.

Q. Did you examine the contents of the refrigerator? A. I did.

Q. What did you find in the refrigerator?

A. I found the pack sack, the two flying boots, the pair of flying trousers; there is another little coat that had Sylvia Henderson marked on it, and there was another little coat in there. There was a toaster and a hot plate.

Q. Were there any kind of wrappings around the refrigerator and stove?

(Testimony of Stanley D. Baskin.)

A. There was a down blanket and on the stove was what appeared to be a khaki blanket. The down blanket was wrapped around the refrigerator. The khaki blanket was on the top and in front of the range. [150]

Q. Mr. Baskin, did you find——

Mr. Arend: Will you please give this an identification number?

(Thereupon the down blanket was marked Plaintiff's Identification No. 11 by the clerk of the court.)

Q. Mr. Baskin, have you examined this down blanket which now bears Identification No. 11? Can you identify that?

A. I didn't put any marks on it, but it was wrapped around the refrigerator inside the box, inside the crate.

Q. Can you state whether this is the blanket that you found around it?

A. It is, because I took it out yesterday.

Mr. Arend: We would like to have this also marked for identification.

(Thereupon a blanket was marked Plaintiff's Identification No. 12 by the clerk of the court.)

Q. I show you Government's Identification No. 12 and ask you if you have ever seen that before?

A. Well, I have seen one just like it that was wrapped around the top and the front of the electric range which I took off of the range yesterday.

(Testimony of Stanley D. Baskin.)

Q. At the time you examined the range, did you examine it for serial numbers? A. Yes, I did.

Q. Did you find any serial numbers on the range. A. I did. [151]

Q. What number did you find?

A. The serial number on the range is 830175.

Q. Did you find that number there on the 7th of December, 1945? A. I did.

Q. And have you checked it now to see if it bears that number? A. I have, and it does.

Q. It does. On December 7, 1945, did you find a serial number on the refrigerator?

A. There was no serial number on the refrigerator.

Q. What did you find in that respect?

A. We found a serial number on the refrigeration unit in the refrigerator. The serial number of the refrigerator had been removed.

Q. Do you know who removed it?

A. No, I don't.

The Court: Just a moment. Look at the indictment here where it mentions the serial number of the range and see if this serial number in the Indictment is the same as you found in Anchorage that you have been speaking about.

The Witness: The electric range, it states in the indictment, bears serial number 831075, and the serial number on the range, as I have examined it, is 830175.

The Court: The same?

(Testimony of Stanley D. Baskin.)

The Witness: The same number.

Q. (By Mr. Arend): What did you do with the plywood boxes that you found at Fowler's residence and the contents thereof?

A. I nailed the boxes back together and put them back in the cabin behind Mr. Fowler's house and locked it up.

Q. Do you know what happened finally, what disposition was made of them?

A. They were subsequently taken to the Northern Transfer Company warehouse and held there until they were shipped to Fairbanks to me in February of 1946.

Q. Are you familiar with the handwriting of Percy James Cutting?

A. I am familiar with the handwriting which he acknowledged was his handwriting.

Q. Are you familiar with the handwriting of Mrs. Audrey Henderson Cutting?

A. No, not that I know that it is her handwriting. I have never seen her writing.

Mr. Arend: I would like these marked for identification.

(Thereupon two tally-out sheets were marked by the clerk of the court as Plaintiff's Identifications 13 and 14 and are in words and figures as follows, to wit:)

(Testimony of Stanley D. Baskin.)

Plaintiff's Identification 13:

"Tally-Out (Packing or Loading List)

"War Department. Q.M.C. Form No. 490. (Revised February 8, 1938.)

Serial No. Req. No.

No. of sheets Sheet No.

Ladd—Satellite (Station). [153]

"Warehouse. Engineer. Mile 26. Date 5 June 1945.

"Consignee. Engineer. Ladd Field. Carrier.

"Destination. B/L No.

"Routing. Car No., Initials, Seals No.

"Date Shipped 5 June 1945. Authority P. J. Cutting, Engineer, Satellite.

"U. S. Nos. on Packages	Number and Kind of Packages	Contents	Gross Weight (Pounds)		Cubic Measure
			Unit	Total	
	3 ea.	Spark Oil Heater			
	4 ea.	Spark Oil Heater no name			
	2 ea.	Electric Heaters			
	2 ea.	Electric Ranges			
	6 Boxes	Assorted bolts & nuts			
	4 Rolls	Iron Wire			
		Numerous small rolls of all sizes of wire			
		Several boxes of misc. hardware.			
	1 ea.	Wis. Pump			
	1 ea.	Onan light plant.			
		Excess property.			

.....Packer.

.....Shipper.

"/s/ P. J. CUTTING, Checker.

"Received the above articles in apparent good order and condition (except as noted) this date. . . .

.....(Signature),

.....(Destination)."

(On the reverse side of Plaintiff's Identification No. 13, is the following notation: "A.J.H. 12/26/45 S.D.B.")

(Testimony of Stanley D. Baskin.)

Plaintiff's Identification No. 14:

"Tally-Out (Packing or Loading List)

"War Department. Q.M.C. Form No. 490. (Revised February 8, 1938.)

Serial No..... Req. No.

Nof. of Sheets Sheet No.

Ladd—Satellite (Station).

"Warehouse. Engineers. Mile 26. Date 28 May 1945.

"Consignee. Engineers. Carrier.....

"Destination, Ladd Field. B/L No.

"Routing..... Car No., Initials, Seals No.....

"Date shipped..... Authority P. J. Cutting, Engineers, Satellite.

"U. S. Nos. on Packages	Number and Kind of Packages	Contents	Gross Weight (Pounds)		Cubic Measure
			Unit	Total	
	8 ea.	Cannons Heaters			
	3 ea.	Inter Oil Stoves			
	4 crates	Stove pipe 6"-8"			
	2 ea.	Refrigerators			
		Assorted pipe fittings			
		Sheet metal.			
		Excess property			

.....Packer.

.....Shipper.

"/s/ P. J. CUTTING, Checker. [155]

"Received the above articles in apparent good order and condition (except as noted) this date.....

.....(Signature),

.....(Destination)."

(On the reverse side of Plaintiff's Identification No. 14 is the following notation: "A. J. H. 12/26/45 S. D. B.")

(Testimony of Stanley D. Baskin.)

Q. (By Mr. Arend): I show you Plaintiff's Identifications Nos. 13 and 14 and ask you to examine them. Now I will ask you: have you ever had them in your possession? A. I have.

Q. And from whom did you obtain them?

A. Andrew Jackson Hall, on December 26, 1945.

Q. I call your attention to the signature over the word "checker" of P. J. Cutting on both of these identifications and ask you to state whether or not that is in the handwriting of P. J. Cutting, Percy James Cutting, the defendant?

Mr. Taylor: I object to that, your Honor. This witness, I believe, stated that he didn't know the handwriting of Mr. Cutting.

The Witness: I said that I was familiar with handwriting that Mr. Cutting acknowledged was his own.

The Court: Objection overruled.

A. This appears to be similar to handwriting which Mr. Cutting acknowledged to me was his own handwriting. [156]

Mr. Arend: At this time, your Honor, we offer in evidence Plaintiff's Identifications 2 and 3, the range and the refrigerator; 6 and 7, the plywood boxes; No. 8, the boots; No. 9, the pack sack; No. 10, the leather pants; No. 11, the blankets, and No. 12; No. 11, the quilt blanket and No. 12, the army blanket.

The Court: Have you connected this refrigerator up with the refrigerator described in Count II?

Mr. Arend: Your Honor, we have so far as we are going to be able to.

(Testimony of Stanley D. Baskin.)

The Court: Didn't this witness say there was a refrigeration unit there with the numbers on it, and so forth?

Mr. Arend: He testified there was no regular serial number.

Q. (By Mr. Arend): What numbers did you find on the refrigerator, Mr. Baskin, on December 7, 1945?

A. The model number on the refrigeration unit of the refrigerator is indicated as JX-5, and the style number is 9630150, and the serial number is 4218692; and the indictment shows the model number to be JX-5, the style number to be 9630150, serial number 4218652.

The Court: The same as the number on the refrigerator?

The Witness: The serial number isn't the same. The serial number in the indictment reads 4218652; the serial number on the unit is 4218692.

The Court: In other words, the one you found in Anchorage had a different serial number than the indictment says the refrigeration unit has?

The Witness: That is correct, sir.

The Court: Make your offer again, please. Make them separately.

Mr. Arend: Now, if the Court please, we offer, first, identification No. 6, being a crate in which the testimony has shown there was a range.

Mr. Taylor: We object, your Honor, upon the grounds that the property was seized in violation of this defendant's constitutional rights under the

(Testimony of Stanley D. Baskin.)

Fourth Amendment of the Constitution, in that there was property taken without due process of law; that there was no search warrant issued. The testimony has been that Mr. Fowler gave permission, but I don't believe that Mr. Fowler could waive the defendant's rights in permitting the F.B.I. agents to take the property. And further that it isn't properly connected with the Indictment.

The Court: Objection overruled. It may be admitted.

(Thereupon Plaintiff's Identification 6 was marked, by the clerk of the court, as Plaintiff's Exhibit D.)

Mr. Arend: Next we offer Plaintiff's Identification No. 2, an electric range, in evidence, as one of the government's exhibits in this case.

Mr. Taylor: I make the same objection, your Honor. [158]

The Court: Same ruling. It may be admitted.

(Thereupon Plaintiff's Identification No. 2 was marked, by the clerk of the court, as Plaintiff's Exhibit E.)

Mr. Taylor: Same objection.

Mr. Arend: Then, your Honor, we next offer Plaintiff's Identification No. 12, an army blanket, which the testimony shows was wrapped around this range, Identification No. 2.

(Testimony of Stanley D. Baskin.)

Mr. Taylor: We object to the admission of that upon the same grounds as stated before, your Honor.

The Court: Same ruling. It may be admitted.

(Thereupon Plaintiff's Identification No. 12 was marked, by the clerk of the court, as Plaintiff's Exhibit F.)

Mr. Arend: And we offer next, Plaintiff's Identification No. 7, the crate in which was the refrigerator.

Mr. Taylor: Same objection, your Honor.

The Court: Objection sustained.

Mr. Arend: We make no further offers. You may cross-examine this witness.

Cross-Examination

By Mr. Taylor:

Q. Mr. Baskin, you know Andrew Jackson Hall?

A. Yes, I do.

Q. When did you first meet Mr. Hall?

A. That was August 27, 1945. [159]

Q. And where did you meet him?

A. In the C. and H. Electrical Shop in the Moose Hall, Fairbanks, Alaska.

Q. And who was present?

A. Just Mr. Hall and myself.

Q. And what was the conversation about, Mr. Baskin?

A. I asked him if he had any electric motors.

Q. And what did he say?

(Testimony of Stanley D. Baskin.)

A. I asked him first what his name was. I went there to see Mr. Cutting, and he wasn't there, so I asked Mr. Hall what his name was, and he told me that it was Andrew Jackson Hall, and I asked him where he got some electric motors that were in the shop. He said he bought—he got one of them off of the junk pile at Satellite Field, which had cement in it, which he took out, and repaired the motor; he got another one in exchange from the Elks Club at Fairbanks, and two others from a person who he didn't know who it was.

Q. And what did you do or say then?

A. I asked him if he would permit me to take those to the office and hold them pending further investigation.

Q. And you took those at that time?

A. I did, with his permission.

Q. Did you have any conversation with Mr. Hall at that time regarding this refrigerator and range?

A. Yes, sir. [160]

Q. When did you talk with him about them?

A. Well, I talked with him the first time about November 1st.

Q. Where was that conversation?

A. The next time was about the 20th of November, and then again on the 19th of December.

Q. And in this conversation on November 1st, what was said about the refrigerator? Did you question him about them at the time?

A. Yes. I asked him if he knew anything about a range or refrigerator being brought in from Ladd Field, or Satellite Field, to Moose Hall.

(Testimony of Stanley D. Baskin.)

Q. And what was his answer?

A. He said he didn't know anything about them.

Q. He didn't? A. He did not, yes.

Q. And was that the extent of the conversation at that time?

A. Well, of course, we talked about the range and refrigerator. We talked several minutes about it, but that was the substance. He never admitted he knew anything about it at any time until about December 19, 1945.

Q. December 19, 1945. Did you say you had another conversation with him? Was that the second or third conversation?

A. That was the third conversation. However, the second conversation was about the refrigerator and some other things too.

Q. What did he state, then, about his knowledge of these two items? [161]

A. Well, he again denied having knowledge of them.

Q. And on the third conversation you had with him, what was said?

A. He told me that on or about May 18, 1945, that he was working at Satellite Field under Percy James Cutting, and that on that date he had driven out to Satellite Field in a U-Drive pick-up and Cutting told him to meet a truck about two miles this side, about two miles from Satellite Field on the road to Fairbanks and to remove a refrigerator and a range that were on that truck, put them on his pick-up, and bring them in to the Moose Hall,

(Testimony of Stanley D. Baskin.)

and he said he did that, he and Joe Lymp and Charles Cors.

Q. And when did you first talk to Mr. Cutting about this?

A. I talked to Mr. Cutting on December 6.

Q. Whereabouts?

A. At Anchorage, Alaska.

Q. And you stated that that conference took place in the F.B.I. office at Anchorage?

A. Yes, sir.

Q. In the presence of Mr. Cutting and Mr. Norton?

A. Mr. Hugh C. Norton, Mr. Cutting, and myself.

Q. Now, isn't it a fact, Mr. Baskin, that at the time that you talked with Mr. Cutting you asked him if he had any stolen ranges or refrigerators in his possession?

A. I asked him if he any kind of ranges, any kind of Westinghouse refrigerator or electric range. We didn't limit it to any stolen range. I talked to him for some two hours, and I asked him about any kind of Westinghouse refrigerator or range. It was never limited to a stolen refrigerator or range.

Q. Did you tell him the range and refrigerator had been stolen from Satellite Field?

A. I informed him that my information was that he had directed Joe Lymp and Andrew Hall to take a refrigerator off of a truck that was consigned to Ladd Field and that they did take it off of the truck at about two miles from Satellite Field and

(Testimony of Stanley D. Baskin.)

that it was then put in Percy James Cutting's apartment by him subsequently.

Q. Then, following that, did Mr. Cutting sign any statement at that time?

A. No, he didn't sign any statement.

Q. When did you have your next conversation with him?

A. I never interviewed Mr. Cutting again.

Q. That was all so far as your conversation with Mr. Cutting was concerned?

A. Well, except that when we went over to his home and we again talked. I interviewed him in the presence of his wife. I went over the same questions, or, the same general questions, regarding the refrigerator and the range at his home, but those are the only two times I interviewed Mr. Cutting.

Q. And was it at the first interview or the second interview that you asked him if you could search his place?

A. It was the first one in the F.B.I. office, and he consented. In fact, he asked us to go over there, and he showed me through the house, he and his wife.

Q. Did you ever ask him if you could open these boxes that contained his personal effects?

A. No, I didn't ask him that.

Q. When you went down to Mr. Fowler's, did you have a search warrant to open those boxes.

A. No, I didn't.

(Testimony of Stanley D. Baskin.)

Q. You didn't get a search warrant?

A. No, sir. Mr. Fowler's permission was sufficient.

Q. And Mr. Fowler waived Mr. Cutting's rights?

Mr. Arend: We object to that, your Honor. It is irrelevant to the issues in this case.

The Court: Objection sustained.

Q. (By Mr. Taylor): Now, what time did you go down to Mr. Cutting's home?

A. It was about nine or nine-thirty p.m. on December 6, 1945.

Q. And what did you do when you went in?

A. We were first introduced to his wife.

Q. You hadn't met her before?

A. No, I hadn't. And I told her that Mr. Cutting said we could search his place and asked her if she had any objection, and she said she did not, and thereafter they proceeded—both he and Mrs. Cutting—to show us around their place. We went into every room, down into the basement, and examined it rather carefully.

Q. Now, Mr. Baskin, at the time that you went down there, isn't it a fact that you had already seen these things in Mr. Fowler's cabin?

A. No, sir, it is not.

Q. You didn't know that those were there?

A. I knew, from talking to Hugh C. Norton, that he had seen Mr. Cutting take two boxes down to Mr. Fowler's place, but I had never seen them, but he didn't know that they were there, inasmuch as they could have been moved in the meantime.

(Testimony of Stanley D. Baskin.)

Q. Did you and Mr. Norton go down there together?

A. We did—No, not on November 20, 1945, when Mr. Cutting took them there, I wasn't there.

Q. But Mr. Norton informed you that these two boxes was down at Mr. Fowler's place?

A. That's right.

Q. And regardless of the fact that you knew those were in Mr. Fowler's house, you went down and searched Mr. Cutting's home?

A. I searched Cutting's home, that's right, with his permission.

Q. Knowing that those things were in Mr. Fowler's shed?

A. I knew that those boxes were there. I had no idea, nor did Mr. Norton, as to what the contents of those two boxes were.

Q. You stated that Mr. Norton had seen those boxes?

A. He had seen those two boxes, as shown here by exhibits in this court, as they were nailed up, but that is all he saw. [165]

Q. Hadn't Mr. Hall told you about those boxes?

A. No, sir. Mr. Hall hadn't told me anything about those boxes. He told me that first on December 19, 1945.

Q. Didn't you know that Mr. Hall had crated them up and sent them down?

A. I didn't know that Mr. Hall did, no. I knew that they had been crated and sent down, but I didn't know who did it.

(Testimony of Stanley D. Baskin.)

Q. Now, just where did you go in Mr. Cutting's house, Mr. Hall?

A. As I remember his house, we went in through the back onto a porch, and the next room was a kitchen. There was a General Electric range in there, no refrigerator, and the other room was a large living room, and then we went upstairs into, I think, there was two bedrooms, or at least there are two rooms. Then Mr. Cutting led me down into the basement and showed me the coal pile in the basement.

Q. Did you go in the bedroom of Mrs. Cutting's daughter?

A. I think—yes, I did. That was—I say “into her bedroom”; I went into a bedroom upstairs; they might have told me it was her room. At least I think there was two bedrooms upstairs.

Q. And was the daughter in that room?

A. Well, now, I don't recall that she was in the room. I think she was in the building, though. I think that she was probably there.

Q. Isn't it a fact that you looked in the closets in her bedroom? A. Yes.

Q. The bureau drawers?

A. No, I didn't look in the bureau drawers. I looked in the closet.

Q. Do you know how this girl was dressed at the time you went in her bedroom?

A. Well, I saw her around the house there. She was dressed in ordinary clothes, ladies' clothes.

Q. Isn't it a fact that when you went upstairs, you went up first, Mr. Baskin?

(Testimony of Stanley D. Baskin.)

A. No. Mr. Cutting led me upstairs. I followed him. Mr. Norton was behind me.

Q. Isn't it a fact that Mr. Cutting objected to your making a search of his house when you came down there?

A. He did not. He at no time made or raised any objection.

Q. And that was the last time that you had a conversation with Mr. Cutting, was it?

A. That is the last time I had a conversation with him.

Q. When did you go to the States, Mr. Baskin?

A. I went to the States on April 1, 1946.

Q. You had no further conversation with either Mr. Cutting or Mrs. Cutting?

A. Well, I ran into Mrs. Cutting about February 22 here in Fairbanks and talked with her on the street casually. [167]

Q. Where did that conversation take place?

A. In front of the Nordale Hotel. I just—She happened to be coming out of the Hotel, and I was going by, and I spoke to her, and that is all.

Q. Now, a certain instrument here, marked for identification, was called to your attention. That is supposed to have the signature of Mr. Cutting on it. Have you seen the signature of Mr. Cutting before?

A. I have seen a signature that Mr. Cutting acknowledged to me was his signature.

Q. He acknowledged that this was his signature?

(Testimony of Stanley D. Baskin.)

A. He didn't say that that one there was his signature, no.

Q. But you have seen another signature that resembled this?

A. Yes, sir. He acknowledged that the other signature which I mentioned was his signature.

Q. Did he ever acknowledge that that was his signature, Mr. Baskin?

A. I beg your pardon?

Q. Did he ever acknowledge that that was his signature on those two slips that you identified?

A. No. I never showed them to him. I obtained those December 26, 1945.

Q. Where did you get those?

A. From Andrew Hall.

Q. Mr. Hall was the man who hauled the refrigerator and stove out from Satellite Field? [168]

A. Yes. He said he took them off of the truck pursuant to Mr. Cutting's instructions.

Q. When you went into the basement of Mr. Cutting's home, did you find any of these boxes that had been taken from here down — I don't believe you heard the testimony. The testimony was about twenty boxes of household goods was taken to Anchorage. Did you see any of those boxes around in the basement? A. No, sir.

Q. Just what was in the basement?

A. The only thing that was down there was a coal pile. There might have been something else, some tools or equipment, but there were no other boxes down there—I don't know—just——

(Testimony of Stanley D. Baskin.)

Q. Did you look around for the boxes?

A. Yes, sir, I did.

Q. And was there a furnace in the basement?

A. Yes, I think so.

Q. Did you pay any particular attention to what it was, hot air heat or steam heat?

A. No. Just a coal furnace was the only thing I noticed.

Q. And about how much coal was in there?

A. Oh, I would say there was about half a ton; maybe five hundred to one thousand pounds.

Q. Was there a coal chute there where that would be put in the basement? Did you notice that?

A. I didn't notice one, but I assume there was one, because it was piled up next to the wall, and it would be rather inconvenient to have it brought in through the back porch and into the basement.

Q. I believe you came back here in February as a witness before the grand jury?

A. I was a witness before the grand jury. I was here then.

Q. I believe you testified awhile ago that Mr. Hall had made a written statement to you regarding his implication, or, in the form of a confession of his activities in regard to the range and refrigerator?

A. He gave me a written statement as to what he knew about the whole thing.

Q. Mr. Baskin, I believe you might just tell me, when you are interviewing anybody in your office, do you customarily take notes of what is said?

A. Yes, I do.

(Testimony of Stanley D. Baskin.)

Q. And what do you do with those notes?

A. I retain those. I put them in the file of the Federal Bureau of Investigation.

Q. And I believe you stated that you interviewed Mr. Cutting for two hours the first time?

A. Approximately two hours, yes, sir.

Q. Now, Mr. Baskin, you were asked to state the subject of this conversation. In a period of about three minutes you gave the context of a two-hour conversation. Now, have you the notes that you made at that time?

A. Yes, sir. [170]

Q. Have you them with you? A. Yes, sir.

Q. And could you produce them if called upon?

A. I could.

Q. The whole set of notes? Mr. Cutting signed those when he got through?

A. No, he did not.

Q. Those are merely—you merely jot down those notes?

A. As we went along, I could jot down enough of it to know what he said so that I could report it and remember it.

Q. Is that more or less in the nature of a short, disjointed statement which you fill out later?

A. That is right. Just phrases and words so that I know what he said.

Q. When you type it up, you elaborate on them, but just enough so that you can carry them out?

A. That is right. I put down enough so that I can—enough of what he said so that I could put down, when I wrote them up, what he said.

(Testimony of Stanley D. Baskin.)

Q. And the material parts of this two-hour conversation is what you stated a little while ago, Mr. Baskin? A. I beg your pardon?

Q. The material part of this two-hour conversation is what you testified to a few minutes ago?

A. That's right.

Q. Only the parts dealing with the range and refrigerator?

A. Oh, no. I also asked him about the linoleum that was in his apartment, and the celotex, and the plyboard, and the other fixtures that went into it.

Q. Could I take a look at your notes, Mr. Baskin?

A. I have no objection.

Mr. Arend: If the Court please, if he wants to introduce them in evidence, we have no objection, but for this purpose, in this instance, at any rate, the testimony of the witness seems to me to be the best evidence.

The Court: The objection will be sustained.

Mr. McCutcheon: You mean, your Honor, we are put under the condition that we must introduce them if we ask for them?

The Court: This witness didn't testify from notes; he testified from memory.

Mr. McCutcheon: Your Honor, doesn't the Compiled Laws of Alaska give us the right to view such papers?

The Court: Only where the witness has testified from his notes.

Mr. McCutcheon: Very well, sir.

(Testimony of Stanley D. Baskin.)

(A ten minute recess was declared, after which court was duly reconvened. All members of the jury were present.) [172]

The Court: Counsel ready to proceed?

Mr. Taylor: Yes, your Honor.

Q. (By Mr. Taylor): Mr. Baskin, you state that you didn't see any of the other boxes which had been shipped down from Fairbanks when you went to Mr. Cutting's house; is that right?

A. That is right. There were no boxes in the basement or in the house. I had never seen any boxes in Fairbanks.

Q. Well, isn't it a fact that when you went onto the back porch there was a number of boxes there and that you asked Mr. Cutting what was in the boxes?

A. No, that isn't a fact.

Q. You didn't see any boxes on the back porch?

A. You mean under the back porch or on the back porch?

Q. On the back porch.

A. There was a tool chest out there that we looked at.

Q. That was the only box on the back porch?

A. The only box of any size, yes.

Mr. Taylor: That is all.

Redirect Examination

By Mr. Arend:

Q. Did you take anything away from the Cutting house in Anchorage as a result of your search?

A. I did not.

Mr. Arend: That is all.

(Witness excused.)

ALVA A. GOULD

called as a witness on behalf of the plaintiff, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. Alva A. Gould.

Q. Where are you employed, Mr. Gould?

A. N. C. shipping department.

Q. How long have you worked there?

A. '43, '44, '45, '46.

Q. Do you know Leo Hardy? A. Yes, sir.

Q. Do you know Mrs. Percy James Cutting?

A. I have met the lady, yes.

Q. Calling your attention to the 7th day of November, 1945, were you with Mr. Hardy on that day? A. Yes, sir.

Q. Were you with Mr. Hardy on Second and Wickersham at a building just this side of what is known as Gene's garage? A. Yes, sir.

Q. And what were you doing there?

A. Loading some personal property that the lady owned.

Q. What did you load there?

A. At that one spot?

Q. Yes.

A. If I remember correctly, we loaded two boxes out there.

Q. Can you state as to the weight of those boxes?

(Testimony of Alva A. Gould)

A. Well, I couldn't definitely state the weight, but it is all two men could do to put it up on the truck. [174]

Q. Both boxes?

A. Each one, yes. One wasn't as heavy. One wasn't so heavy. In fact, most of her stuff was heavy.

Q. Did you see her there at all?

A. Yes, she was there with us.

Q. Do you know what the heavy boxes contained?

A. No, not definitely. Not outside of I asked her if I could roll it, and she said "No," there was a stove in it.

Mr. Arend: You may cross-examine.

Mr. Taylor: No cross-examination.

Mr. Arend: That is all, Mr. Gould.

(Witness excused.)

ROGER VERNON GULL

called as a witness on behalf of the plaintiff, having been duly sworn, by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. Will you state your full name, please?

A. Roger Vernon Gull.

Q. Where do you reside, Mr. Gull?

A. Fairbanks.

Q. What is your occupation?

A. Plumbing appliance shop.

(Testimony of Roger Vernon Gull)

Q. Do you have any business connections with the Westinghouse Electric and Manufacturing Company?

A. I am their representative in Fairbanks.

Q. Do you handle their ranges and refrigerators?

A. When I get them.

Q. How long have you represented them?

A. Since November, 1944.

Q. How long have you familiarized yourself with Westinghouse Electric ranges and refrigerators?

A. Since 1938.

Q. Will you step down here? I call your attention to government's Exhibit E. purporting to be a Westinghouse electric range. Will you examine that? And then will you please examine Government's Identification No. 7? All right, you may take the stand again. [176]

(The witness resumed the witness stand.)

Q. Having examined Government's Exhibit E, the range, what, in your opinion, is the market value of that range?

A. Well, it is a 1939 model. At that time it retailed in Fairbanks for \$100.00 to \$110.00.

Q. What would its market value be today?

A. That would depend entirely on the condition of the range.

Q. Well, have you examined it sufficiently so that you can state?

A. If it is in working condition. It would have a valuation of anywhere from \$45.00 to \$75.00 or-

(Testimony of Roger Vernon Gull)

dinarily. If it is not a new range and after it has been in use for six months, you discount thirty-three and one-half per cent, and each year afterwards you deduct a certain percentage.

Q. What, in your opinion, is the value of that refrigerator today?

A. Well, I purchased the General Electric refrigerator, same condition, same size, for \$75.00 from Anne Schiek

Q. How long ago?

A. About three months ago.

Q. Have you identified these two items as Westinghouse equipment?

A. Yes. They both wear the brand name.

Mr. Arend: You may cross-examine. [177]

Cross-Examination

By Mr. Taylor:

Q. Did you ever talk to Mr. Arend about these two exhibits before, Mr. Gull? A. No.

Q. What? A. No, I haven't.

Q. How do you happen to be up here today?

A. I was notified to come.

Q. Who by? A. By the court.

Q. You never had any conversation with Mr. Arend at all? A. No, I haven't.

Q. This is the first conversation you had with him?

A. In the hall for about a minute when they called me.

(Testimony of Roger Vernon Gull)

Q. Now, Mr. Gull, calling your attention to this refrigerator there, are the refrigeration units in there interchangeable in refrigerators of that type?

A. Yes, they are.

Q. And that refrigeration unit can be pulled out and another refrigeration unit put in?

A. Yes.

Q. Is there any serial number on the refrigerator itself, on the box?

A. There should be one on the back of the box.

Q. But in the event a refrigeration unit, which is the actual mechanical part of the refrigerator, for any reason wouldn't work, you could install another unit in there? A. Yes.

Q. Could you say that this box is the box with the original refrigeration unit in it?

A. That would be impossible to say.

Mr. Taylor: That is all, Mr. Gull.

Redirect Examination

By Mr. Arend:

Q. Mr. Gull, what would be the value of the refrigerator without the refrigeration unit in it?

A. About \$15.00.

Q. About \$15.00?

A. You couldn't even use it for an ice box.

Mr. Arend: Your Honor, at this time we make an offer again of Government's Identification No. 3, the refrigerator without the refrigeration unit.

Mr. Taylor: If the Court please, we are going to object to that upon the ground that there is no

(Testimony of Roger Vernon Gull)
identification of the box. The Indictment says that Mr. Cutting took and carried away a refrigerator. The Government's own witness testifies that the freezing unit is interchangeable and it is impossible to tell whether that is the original box it came in or not.

The Court: The objection will be sustained.

(Witness excused.) [179]

HUGH C. NORTON

called as a witness on behalf of the plaintiff, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please, Mr. Norton.

A. Hugh C. Norton.

Q. Where do you reside?

A. Philadelphia, Pennsylvania.

Q. What is your occupation?

A. I am a special agent of the F.B.I.

Q. How long have you been with the Federal Bureau of Investigation?

A. A few months over seven years.

Q. Were you ever stationed in Alaska?

A. Yes, sir.

Q. Where?

A. First in Juneau and next in Anchorage.

Q. Were you in Anchorage during the winter of 1945 and 1946?

A. Yes, sir.

(Testimony of Hugh C. Norton.)

Q. Are you acquainted with the defendant Percy James Cutting sitting here? A. Yes, sir.

Q. Do you know his wife, Audrey Henderson Cutting? A. Yes, sir.

Q. I would like to have you step down here and examine Government's Exhibit E, an electric range, and Government's Exhibit D, this plyboard box.

A. Yes, sir.

Q. Will you also examine Government's Identification 3, this refrigerator, and Government's Identification No. 7? A. Yes, sir.

Q. While you are here, will you also examine Government's Identification No. 8, being a pair of boots? A. Yes, sir.

Q. And Government's Identification No. 9, a pack sack? A. Yes, sir.

Q. And Government's Identification No. 10, leather pants, and Government's Identification No. 11, which is a quilt? A. Yes, sir.

Q. Finally, this Government's Identification No. 12, being a woolen army blanket? A. Yes, sir.

Q. Now, you may take the witness stand.

(The witness returned to the witness stand.)

Q. Have you seen before these items that you have just examined? A. Yes, sir.

Q. When and where?

A. At Anchorage, Alaska. The two crates first on—these are notes that I made at the time that I examined the items—on November 20, 1945, and the other materials, the other items, I have examined on December 7, 1945.

(Testimony of Hugh C. Norton.)

Q. And where did you see the boxes on November 20, 1945?

A. In the warehouse of the Northern Commercial Company in Anchorage.

Q. How did you happen to see them there?

A. Well, in the afternoon of November 20, 1945, I had receipt of information that these boxes, crates, containing government owned equipment were in the N. C. warehouse, so I went over to see Mr. Peterson, the manager of the warehouse, and this time I saw these two crates, along with nineteen other crates and boxes, on the bed of a large truck inside of the warehouse. At that time I marked them so that I would know them at any future time I might see them; and I requested that the storekeeper of the warehouse notify me as soon as anyone came to pick them up. He told me—Mr. Peterson, the manager, told me that a Mrs. Audrey Cutting had been in the warehouse just a short time before that and told him, Mr. Peterson——

Mr. McCutcheon (Interposing): We object to that as hearsay, your Honor. [182]

The Court: Objection sustained.

Q. (By Mr. Arend): Just tell what you know of your own knowledge, or what was told you in the presence of the witness. Otherwise just tell what you did.

A. And I told Mr. Adams to let me know as soon as anyone came and I went back to our office in the Federal Building in Anchorage to await his call.

Q. Did you receive a call?

A. Yes, sir, at three-forty-five in the afternoon.

(Testimony of Hugh C. Norton.)

Q. And what did you do after you received this call?

A. I immediately got in a government car and drove over to the N. C. warehouse, where I parked the car across the street from the warehouse and went inside.

Q. And what did you observe there?

A. I saw two men and one woman on the bed on the truck. The two men were on the bed of the truck and the one woman was on the running board of the truck holding the boxes, and they had a small red pick-up truck backed up to the rear of the truck and pushed these two crates on the small truck. I stayed there for probably five minutes, so that I would be certain I would recognize both the men and the woman again if I saw them again. Then I went outside, across the street, and got into my truck, or, rather my automobile, and waited until they drove their small pick-up truck out of the warehouse. While I was in there, I took the license number of the small red pick-up truck and noted its general description, so that I would know for certain that was the truck that came out of the warehouse. Those were the only two automobiles in the building, so there was no doubt about which came out; and I waited probably fifteen minutes, and a large door of the garage opened and this same truck came out with the three people in it, and they drove—the N. C. warehouse is located and I was parked on Fifth Avenue between Ninth and H Streets. The red pick-up truck drove out with the two crates

(Testimony of Hugh C. Norton.)

in it, and they went out to a small out-building at the rear of 214 Fifth Avenue in Anchorage, where the two men unloaded these two large crates, put them in the small building, and the woman who was with them went into the house at 214 Fifth Avenue. It took them approximately twenty minutes to unload the two large cases, and the one individual, one man, Mr. Cutting, drove the small red pick-up truck to the Pacific Airmotive hangar at Marrow Field at Anchorage at four-thirty-five p.m. There I discontinued my surveillance and went back to my office.

Q. Can you now state who these two men were who unloaded these boxes? A. Yes, sir.

Q. Who were they?

A. Mr. Cutting and Mr. Howard Fowler.

Q. By "Mr. Cutting," do you mean the defendant? A. I do.

Q. Do you know who the lady was?

A. Yes. Mrs. Audrey Cutting.

Q. Did you, at any later time, see these crates in Anchorage?

A. Yes; on numerous occasions, after November 20, 1945, I went back and drove by this small building. Incidentally, when they were unloading the two cases, I got out of my car and stood within a few feet of them, and I could recognize the same individuals at that time. It was a little dark, and I could stand closely and could see that Mr. Fowler and Mr. Cutting were unloading them. I went back several times to make sure the boxes were still there and hadn't been tampered with and were the same boxes.

(Testimony of Hugh C. Norton.)

Q. Did you ever examine the contents of the boxes? A. Yes, sir.

Q. When did you do that?

A. On December 7, 1945.

Q. And what did you discover as a result of your examination?

A. I found that the boxes contained one Westinghouse electric range, type TH64, serial number 830175, frame style number 1086298, which is that range; and the other box contained one Westinghouse refrigeration, model JX-5, style number 9630150, serial number 4218692, which is that refrigerator, and in addition the other items that I have examined here: the blankets, pack sack, flier's boots, and officer's trousers. [185]

Q. Did you find any blankets in the boxes?

A. Yes, sir. The blanket that the defendant is sitting on and the large comforter on top of the range.

Q. Did you obtain the permission of anyone to examine the contents of those boxes?

A. Yes, sir. Mr. Howard Fowler and his wife.

Q. Mr. Norton, have you made any investigation to determine the ownership of the range and refrigerator just mentioned? A. Yes, sir.

Q. What have you found in that respect?

A. Well, this is one thing that I have done. On December 7, after I examined this range and this refrigerator, I sent a radiogram to our Boston office to interview the officers at the Westinghouse Company at Springfield, Massachusetts, to find out if

(Testimony of Hugh C. Norton.)

they could determine who they sold which items to, and I also sent a radiogram to our Cleveland office to contact the Westinghouse officers at Mansfield, there to find out the same thing, and on December 12 Cleveland advised me——

Mr. Taylor (Interposing): Just a moment. We object to what Cleveland advised him. I think the correspondence, the telegrams, are the best evidence, your Honor.

The Court: Objection sustained.

Q. Do you have the telegraphic communications or whatever communication you received with you from those places? A. No, sir. [186]

Q. All right, let's skip that then.

The Court: Just a moment, I would like to get this straight. Will you read off the data you have there identifying the refrigerator?

The Witness: Model JX-5, style number 9630150, serial number 4218692.

The Court: It is the same as Mr. Baskin had.

Q. (By Mr. Arend): Mr. Norton, did you interview Mr. Cutting on December 19, 1945, relative to a Westinghouse electric range and refrigerator?

A. Yes, sir.

Q. Where was that?

A. That was in our office in Anchorage in the Federal Building.

Q. Who was present?

A. Mr. Charles E. Wright, who is also a special agent of the F.B.I., Mr. Cutting, and myself.

(Testimony of Hugh C. Norton.)

Q. What did you do by way of interview?

A. Well, I talked with Mr. Cutting for some time in an endeavor to get the true story concerning the refrigerator and the range and the other items.

Q. Did he make any admissions regarding the range and refrigerator at that time?

A. Yes, sir.

Q. Did you advise him of his constitutional rights at that time?

A. I told him he did not have to make any statement to me; that any he might make could be used against him in the courts of law. [187]

Q. Did you use any force, threats, coercion, or inducements to get him to make these statements?

A. No, sir.

Q. Did he make a statement? A. Yes, sir.

Q. Did he read it before signing it?

A. Yes, sir.

Q. Do you have that statement with you?

A. Yes, sir.

Q. Will you read it to the jury, please?

A. It is dated December——

Mr. Taylor (Interposing): Just a moment, we want to object to this until it is identified and offered in evidence here. We don't want that to go in here until we have a chance to observe, to see what it is.

The Court: You are offering it in evidence, of course.

Mr. Arend: Yes, we offer it in evidence.

The Court: Well, submit it to counsel first.

(Testimony of Hugh C. Norton.)

Mr. Taylor: No objections, your Honor.

The Court: Very well. It may be admitted.

(Statement by Percy James Cutting, dated December 19, 1945, was marked by the clerk of the court as Plaintiff's Exhibit G and is in words and figures as read by the witness Norton.)

Q. (By Mr. Arend): Will you please read Plaintiff's Exhibit G to the jury?

A. Yes, sir. It is dated "December 19, 1945, Anchorage, Alaska.

"I, Percy James Cutting, 733, 5th Street, Anchorage, Alaska, make the following free and voluntary statement to Hugh C. Norton, who is known to me as a Special Agent of the Federal Bureau of Investigation. I know that I do not have to make a statement and that anything I say may be used against me in a court of law. I also wish to state that nothing has been offered or given to me for making this statement and that I make it of my own free will. I am forty-three years of age and I was born at Castletown, Vermont. I first went to Fairbanks, Alaska, approximately April 1, 1944, where I immediately began working for the U. S. Army Engineers, having previously worked for the Army at Nome, Alaska. I worked continuously for the U. S. Engineers at Fairbanks, Alaska, until November, 1945, when I was transferred to Ft. Richardson, Anchorage, Alaska. While I was in Fairbanks my wife, Mrs. Audrey I. Cutting, operated

(Testimony of Hugh C. Norton.)

the Mount McKinley Ice Cream Company there. About August 30 or 31, 1945, I was in my wife's place of business and a man came in whom I had seen there before but whom I did not know. He asked both my wife and me if we knew anyone who was interested in buying some household furniture. I asked him what he had and he replied that he had chairs, tables, beds, set of dishes, a refrigerator, electric stove, washing machine, a waffle iron and several other items of furniture, including a dining room set. I told him that inasmuch as we already had most of our furniture we would be interested in only the refrigerator, stove, washing machine, waffle iron and the set of dishes. I asked him what he was asking for the items but he did not set a price, saying that he was going to haul a truckload of goods to Anchorage, Alaska, in the near future and that he would bring the items around in a couple of days and we could then take a look at them. Further, that he had these specific items on the truck which was already loaded. My wife and I told him all right and we did not see him again until September 1, 1945, when he came into my wife's place of business about 5:00 p.m. I was there at the time and he told us that he had the furniture outside on the truck and that we could take a look at it. We both went out, my wife and I, and saw that he had numerous boxes on the platform of the truck, with the refrigerator, stove, and washing machine set out where we could examine them. In addition he had a box full of miscellaneous items, mostly kitchen equipment, which included a waffle

(Testimony of Hugh C. Norton.)

iron and a set of Mexican design dishes. After looking these items over I asked him how much he wanted for the refrigerator, stove, washing machine, waffle iron and dishes and he said \$350.00. I offered him \$300.00 and he finally decided to accept. After that he helped me put the refrigerator and washing machine in the first floor hall of the building in which my apartment was located and the electric stove in a small room in the rear of the Veteran's Building in which I had previously stored other of my personal property. My wife took the waffle iron and the set of dishes up to the apartment. The dishes consisted of four each of salad plates, cups, and saucers in addition to one tea-pot. I wish to state at this time that when the transaction occurred Mrs. Cutting and I had not as yet been married and that the apartment was actually her property. I lived in the Veteran's Building. After we had finished storing the equipment we had purchased we all went into the Mt. McKinley Ice Cream Company where we paid the truck driver \$300.00 in cash. We offered to give him a check but he said he was leaving for Anchorage right away and that he would rather have the cash. However, at that time my wife typed out a Bill of Sale covering one Westinghouse Electric Range, one Montgomery Ward Washing machine, one Westinghouse Refrigerator, one Waffle Iron and One Set of Mexican Pottery Dishes" (signed at end of page one) "Percy J. Cutting"

"—2—

"December 19, 1945

"Anchorage, Alaska

(Testimony of Hugh C. Norton.)

“which covered everything we purchased from him. This Bill of Sale is dated September 1, 1945 and sets out in part as follows: ‘M. W. O’Neil assigns all interest of said goods and further claims that household goods are clear of any indebtedness.’ The Bill of Sale is signed by M. W. O’Neil, Bellingham, Washington, c/o General Delivery and is witnesssd by Audrey Henderson who now is Mrs. P. J. Cutting. After signing the Bill of Sale Mr. O’Neil left and although I did not see him again my wife told me that she had seen him in Fairbanks on the following morning at which time she asked him if he was going to Anchorage. He told her that he was going to Anchorage that morning but did not say whether or not he would be back. In regard to the cash we paid O’Neil I gave him \$175.00 and my wife gave him the remaining \$125.00. I haven’t seen O’Neil since that time and do not know whether he is still in Alaska but he did tell me during the course of the conversation at the time of the sale that he intended to remain in the Territory. A week or so later my wife tried to use the washing machine but discovered that the tub was cracked and leaked and after making unsuccessful attempts to repair it by welding, etc., I threw it in the Fairbanks City Dump. It was a second-hand machine and was beyond repair due to the pot metal used in the construction of the tub. The refrigerator and stove remained where we had placed them until about the latter part of October, 1945, when I crated the re-

(Testimony of Hugh C. Norton.)

frigerator and range with the assistance of Andrew Hall, who merely nailed the crates up after I had constructed them. About November 1, 1945, I left Fairbanks, Alaska, and came to Anchorage where I now reside. My wife packed the household equipment that was in the apartment, with the exception of the above-mentioned set of dishes and waffle iron which I placed inside of the refrigerator, and hired the Northern Commercial Company of Fairbanks to transport it to Anchorage. As I recall, it arrived in Anchorage, Alaska about the middle of November, 1945. The equipment remained in the N. C. Company's warehouse in Anchorage until November 20, 1945. Just prior to this I made arrangements to rent an apartment at Ft. Richardson and inasmuch as this apartment was equipped with a stove and refrigerator I contacted Howard Fowler, 214 5th Avenue, Anchorage, and made arrangements with him to store two crates in a small outbuilding he owns which is located immediately to the rear of his house. On November 20, 1945, my wife and I, with the assistance of Mr. Fowler, hauled the refrigerator and stove from the N. C. Company's warehouse to this small outbuilding where I stored them and where, to my knowledge, they still remain. Mr. Fowler did not know what the boxes contained and did not ask after I told him they were household furnishings. I wish to state that everything in the above statement which consists of this and one other

(Testimony of Hugh C. Norton.)

page is true and correct. I have signed each page and initialed all corrections.”

/s/ “PERCY JAMES CUTTING”

“Witness:”

/s/ “CHARLES E. WRIGHT,
Special Agent, F.B.I.”

/s/ “HUGH C. NORTON,
Special Agent, F.B.I.”

Q. (By Mr. Arend): Does everything Mr. Cutting said to you at that interview appear in the statement? A. No, sir.

Q. Do you recall what else was said? Yes or no.

A. Yes. Mr. Cutting and Mrs. Audrey Cutting, who was also present during the first part of the interview, said when I talked to them the first time on December 6, 1945, they said they were sorry that they had lied, told me the big lie that they told me on that day, and that this story was the truth; they said that they thought they could get away with the first lie until they found out that we knew too much about it, so they came in and gave us another story.

Q. This last story is the truth according to their stories? A. Well, that is what he said.

Q. That is what he said? A. Yes.

Q. Have you ever located M. W. O’Neil at Everett, Washington?

A. No, sir. We have tried, but we haven’t been able to find any M. W. O’Neil. By looking through the city directory, the telephone directory, gas bills, electric light bills, post office, we can’t seem to locate anybody by that name.

(Testimony of Hugh C. Norton.)

Q. Do you know what disposition was made of the range and refrigerator?

A. At that time, of course, it remained in the building owned by Mr. Fowler, and on December 19, 1945, when I interviewed Mr. Cutting the second time and took this signed statement I have just read, I asked him if it would be all right if I kept it until it was actually proven who did own it, and he said yes; so I then went to Mr. Fowler and asked him if it was all right if I kept them, and he said yes; so I had them moved, or rather, I moved them to the warehouse of the Northern Transfer Company at Anchorage, where I turned them over to Mr. Stanley Baskin. Another thing I forgot to mention in your previous question: the reason given by Mr. Cutting and his wife when they told me they had told me a big lie the first time they talked to me was Mr. Cutting said, after he started working at Fort Richardson airbase in Anchorage, some army intelligence officers came up to him and asked him if he knew anything about a stolen refrigerator and washing machine, and he said that he did not; and he said, because of the fact that he had bought it from O'Neil, he figured that it was stolen, inasmuch as he couldn't find any serial numbers on it; so when I asked him about it—Mr. Wright and I both asked him about it—he thought he had better cover it up, because he thought it might be stolen. However, the serial numbers are on both pieces.

Mr. Arend: You may cross-examine. [195]

(Testimony of Hugh C. Norton.)

Cross-Examination

By Mr. Taylor:

Q. Mr. Norton—Norton, is that, or Naughton?

A. Norton.

Q. Norton? A. Yes, sir.

Q. You said you had the first conversation with Mr. Cutting on the 20th day of November, 1945?

A. No. No, I didn't talk to him that day at all. I just observed him. I first talked to him—I first talked to him on December 6, 1945.

Q. December 6? A. Yes, sir.

Q. Now, you made a statement that you had received word that stolen government property had been transported to Anchorage. Where did you receive that word from, Mr. Norton?

A. On November 19, 1945, Mr. Stanley Baskin telephoned me from Fairbanks and told me that he had information that a Westinghouse range and refrigerator had been transported to Anchorage by truck and that they were now in the Northern Commercial Company warehouse; they were sent down some time about the first part of November, he told me.

Q. Why did you use the word "stolen"? Does that word "stolen" appear in that message from Mr. Baskin?

A. No. These are merely notes I made when I took the phone call.

Q. That is merely an assumption that they were stolen? A. Well, I don't know.

(Testimony of Hugh C. Norton.)

Q. Or is that remark made to prejudice the defendant here before the jury?

A. No, certainly not. I don't know what Mr. Baskin thought; I just took the message.

Q. You used the words that stolen property had been sent to Anchorage?

A. Well, they are stolen.

Q. You had received word—Did this word there that you received from Mr. Baskin say anything about stolen property?

A. I can't recall now, whether he said it or not, but I will say, if you like, that he may not have; he very possibly didn't—merely property belonging to the government that somebody else had in his possession.

Q. Did Mr. Baskin say that it belonged to the government? Did Mr. Baskin say that it was government property?

A. No. I think he told me he was quite sure it was government property and for me to conduct an investigation and try to find out.

Q. And after you seen this stuff unloaded at the N. C. Company and taken out, you talked to Mr. and Mrs. Cutting; is that right?

A. Sometime after, yes, sir.

Q. Now you stated in your conversation with Mr. and Mrs. Cutting the second time they were sorry they told you the big lie about having this stuff. Who used the words "the big lie," "they told you a big lie?"

A. They did.

Q. Who said they told a big lie?

(Testimony of Hugh C. Norton.)

A. They both did: Mr. and Mrs. Cutting.

Q. Now, in your first conversation, did they deny that they had any stolen government property?

A. Yes, they denied everything.

Q. And in the next conversation you had with them they told about the property that was not stolen that was bought from Mr. O'Neil; is that right?

A. They told me the property was not stolen. They told me about the property that they said was not stolen.

Q. In the second one? A. Yes.

Q. That is the statement that has been introduced in evidence here, Mr. Cutting's statement?

A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Now, you say that you made a search for M. W. O'Neil. Where did you make the search?

A. No, sir. I didn't make the search.

Q. Who did? A. Other special agents.

Q. Whereabouts?

A. Out of our Seattle office at Bellingham, Washington, I think; it was the address given by Mr. O'Neil on the alleged bill of sale.

Q. On the bill of sale. Did you, as an agent of the Federal Bureau of Investigation, make any search for an M. W. O'Neil at Fairbanks?

A. No, sir.

Q. Did you make one at Anchorage?

A. Yes, sir.

(Testimony of Hugh C. Norton.)

Q. Did you find out anything if there was an M. W. O'Neil? A. No, sir.

Q. And you made no search at Fairbanks?

A. No. I wasn't here.

Q. Where did you search in Anchorage?

A. Well, I went to the chief of police, and then we examined the water bills, the gas bills, water bills in the City of Anchorage, tax records, telephone directory, and inquired of the numerous old residents in scattered parts of the town.

Q. And that would be after—Did you search the records—that would be after Mr. O'Neil sold this stuff to Mr. Cutting and went to Anchorage?

A. Will you say that again, please?

Q. Did you examine the records of the City there, the water [199] bills and the other matters you spoke of, after the time that Mr. Cutting said he bought the things from O'Neil?

A. Yes, sir.

Q. But you made no search at Fairbanks, then, for an M. W. O'Neil?

A. I requested Mr. Baskin to make a search. I wasn't here.

Q. Do you know whether or not Mr. Baskin made a search around Fairbanks as to anybody by that name? A. Yes.

Q. Did he make a search? A. Yes.

Q. Did you check on any of the transportation companies, either steam or aerial, that went Outside about that time? A. Yes, sir.

(Testimony of Hugh C. Norton.)

Q. Or any trucks that went over the Highway to the States? A. Any trucks?

Q. Yes, that went over the Alcan Highway.

A. No, sir, I did not do that.

Q. Now, Mr. Cutting's statement there said that this man was leaving in a truck, but you made no search to find out whether an M. W. O'Neil had gone Outside?

A. I think you are in error. Mr. Cutting was told by the man he thought he would stay in the Territory.

Q. He just thought he would stay here?

A. Yes, sir. [200]

Q. Now, that bill of sale, I believe, in the statement says that this man's future address was to be Bellingham, Washington? A. Yes.

Q. General Delivery; is that not right?

A. General Delivery.

Q. And you didn't make any search at Bellingham personally? A. I personally did not.

Q. And do you know whether or not any other agents of the Federal Bureau of Investigation made a search at Bellingham, Washington?

A. Yes, sir.

Q. How do you know?

A. By reports sent to our office in Anchorage from our Seattle office.

Q. Have you got those reports now, Mr. Norton?

A. No, sir, I do not.

(Testimony of Hugh C. Norton.)

Q. Are they in the office here of the F.B.I.?

A. No, they are in the Anchorage office?

Q. They are in Anchorage. So what you know is only more or less hearsay from the officers in Bellingham that they had made a search, but you don't know the extent of that search; is that right?

A. I know they made a search, and they set out in their report what they did; and it is hearsay, I will grant you that.

Q. Did you make any investigation at Fairbanks as to whether or [201] not a man by the name of M. W. O'Neil had resided in or about Fairbanks, Alaska?

A. I personally did not.

Q. For the year or so prior to the date that Mr. Cutting bought these things——

A. No.

Q. From him?

A. No, I did not.

Q. And you don't know whether Mr. Baskin did or not?

A. He told me he did.

Q. Now, coming back to the refrigerator, Mr. Norton, would you just read those numbers off on that that you have on the refrigerator?

A. Yes.

Q. Now, just before you read them, I want to ask you one question. Where is that number on the refrigerator? Is that on the refrigerator proper, or is it on the refrigeration unit?

A. It is on what I would consider to be the refrigeration unit.

Q. All right. Would you read that number off again?

A. Model JX-5, style number 9630150, serial number 4218692.

(Testimony of Hugh C. Norton.)

Q. Just read that serial number. I want to jot it down here. A. 4218692.

Q. Now, are you acquainted with the construction of refrigerators such as that, Mr. Norton?

A. Not a great deal, no. I have examined them.

Q. Do you know whether or not that refrigeration unit is an interchangeable part in there that can be put in any box of that size and type?

A. No, I can't say whether it could or not.

Q. And you don't know whether that refrigerator is the original refrigerator—that is, the box—is the one in which the refrigeration unit came in except that you knew that it was in there at the time you took a look at it? A. That's right.

Q. Now, after your second conversation with Mr. and Mrs. Cutting, did you ever go to the Cutting home in Anchorage?

A. At the time of the—At any time after the first conversation?

Q. Yes. I will just reframe that question. Did you ever go to the Cutting home?

A. Yes, sir.

Q. When? A. On December 6, 1945.

Q. What time of day was it?

A. It was—I don't have it noted, but it was after dinner, I would say, about seven-thirty, eight perhaps.

Q. How did you go in?

A. Well, Mr. Cutting was with us. We went in with him.

(Testimony of Hugh C. Norton.)

Mr. Arend: Your Honor, we object to further questions of this witness as to what happened at the Cutting home on December 6, 1945. Mr. Baskin has gone into this already. It [203] would take up needless time of the court and jury, and besides this witness did not testify on direct examination as to any visit to the Cutting home on December 6, 1945.

The Court: You object on the ground that it is not cross-examination?

Mr. Arend: It is not proper cross-examination, your Honor.

The Court: Objection sustained.

Q. (By Mr. Taylor): Mr. Norton, did you ever go down to the City dump to see if you could find the washing machine that Mr. Cutting had purchased from Mr. O'Neil?

A. The City dump in Fairbanks?

Q. Yes.

A. No, I was not in Fairbanks.

Q. Do you know whether Mr. Baskin did?

A. No, I don't know. I hardly think he did.

Q. And did you see the dishes, and the waffle iron, and the toaster that Mr. O'Neil sold to Mr. and Mrs. Cutting?

A. Well, you say Mr. O'Neil sold them. I don't think he did. I saw——

Q. (Interposing): As stated in Mr. Cutting's typewritten statement.

A. Yes, I did.

Q. You saw a waffle iron?

A. Yes, sir. [204]

Q. And a toaster?

A. Yes, sir.

(Testimony of Hugh C. Norton.)

Q. And I believe you found them in the refrigerator, were they not? A. Yes, sir.

Q. Did you see any dishes, any dishes in there?

A. Yes. There were some glasses in there, and I can't recall whether there were any Mexican dishes or not. I don't have them listed, and it was over a year ago. I don't remember, I am sure.

Q. Your memory would be a little hazy in that length of time?

A. In that regard, well, yes. Dishes certainly wouldn't be government property, and I wouldn't be concerned with them.

Q. Mr. Norton, do you know whether or not the serial number that you have read off there is the same serial number as shown in the Indictment in this case?

A. I don't know about that. This is the same as on the refrigerator. I have not seen the Indictment.

Mr. Taylor: That is all, Mr. Norton.

Mr. Arend: That is all.

(Witness excused.) [205]

JOHN J. BUCKLEY

called as a witness on behalf of the plaintiff, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. State your name, please.

A. John J. Buckley.

(Testimony of John J. Buckley.)

Q. You are the chief deputy marshal for the Fourth Division of Alaska, are you not?

A. Yes, sir.

Q. Mr. Buckley, are you acquainted with Joseph Lymp?

A. I don't know the man, no. I know who he is.

Q. Do you know whether he has ever resided in this vicinity?

A. He resided in—I wouldn't say in this vicinity, but he has a camp at a place called Monument Point on the Tanana River about thirty or forty miles west of Fairbanks.

Q. Do you know where he is now?

A. I have learned today where he is, yes.

Q. Where is he? A. In Portland, Oregon.

Q. Have you had a subpoena for him to testify in this case? A. Yes, sir.

Q. Have you been able to serve that subpoena?

A. I have not been able to serve it, no. [206]

Q. And you just learned today that he is in Portland, Oregon?

A. This morning we learned that he is in Portland, Oregon.

Mr. Arend: That is all.

Cross-Examination

By Mr. Taylor:

Q. How long have you had this subpoena, Mr. Buckley?

A. Oh, I guess we have had it over a month.

(Testimony of John J. Buckley.)

Q. Had you made a search of the records of the transportation companies to see if Mr. Lymp had gone outside?

A. No, we hadn't. We supposed until this morning that he was at Monument Point, and we had asked two or three of the airplane companies, when they were flying over that way, to find out whether they could land, and none of them had reported that they could land there. We tried to get down there by boat, and no one would take us down there, because they were sure they couldn't get over the low water.

Q. Is Monument Point down on the Tanana River?

A. Yes, it is about thirty, forty miles down the Tanana River from Fairbanks.

Mr. Taylor: That is all, Mr. Buckley.

Mr. Arend: That is all. The Government rests.

(Witness excused.) [207]

Mr. Taylor: If the Court please, at this time we would like to move for a judgment of dismissal as to Count I in the Indictment upon the grounds that there isn't sufficient, or, that there is no proof that the property described in there is property of the United States government, and the further ground that the allegations therein do not constitute a crime.

We make the same motion as to Count II, for judgment of dismissal, upon a total failure of proof; that there is no testimony in this case and it hasn't

been shown that this property is the property of the United States of America. There is nothing in the record to show that it is United States government property.

And particularly as to Count II, I wish to call the Court's particular attention to the serial number of the refrigeration unit is entirely different to the serial number as alleged in the Indictment.

The Court: It wasn't admitted in evidence anyway, the refrigerator.

Mr. Taylor: Well, consequently, then, Count II would necessarily have to be dismissed?

The Court: Make your motion and your argument.

Mr. Taylor: If your Honor please, I just made the motion.

The Court: And let the District Attorney make a reply.

Mr. Berrett: Your Honor, we wish to resist the motion [208] as to both counts, the two motions, if they are separate motions. As to Count I, counsel seems to base his contention that Count I should be dismissed on the grounds that the government had failed to establish government ownership of the range in question. I wish merely to refer to the testimony of Captain Coleman who testified that this particular range was assigned to him as government property, and the plaintiff's exhibit A is a memorandum receipt for such consignment of the range in question to Captain Coleman.

As to the motion to dismiss Count II, the testimony has been that the refrigerator has no serial

number plate upon it, the plate having been removed, so that as to the refrigerator—it is what we might refer to as the refrigerator cabinet—there remains merely the description in the complaint of one Westinghouse refrigerator, the personal property of the United States. It is true that in the complaint, in order to further identify what was taken, what is known as the refrigeration unit is described, the refrigeration unit being an interchangeable part of the refrigerator and installed separately—that is, a new unit may be installed into an old refrigerator shell—so that this becomes only a part of the property described in the complaint, in the indictment, in Count II. Now, in this particular matter as to the refrigeration unit, the testimony of the witnesses has been that the particular refrigeration unit now in this [209] refrigerator shell, or cabinet, is of the same model and style, but there was a discrepancy in one of the numbers as to the serial number upon the plate. Evidently, there was some error in drawing up the complaint on the part of the United States Attorney. However, your Honor, I would like to draw attention to the rules in regard to variance between pleadings and proof in regard to the description of an object.

The Court: Ordinarily the jury is excused before the motion is made, and, as long as this is going to be a long argument, we will excuse the jury until tomorrow morning at ten o'clock. Remember, ladies and gentlemen of the jury, do not discuss the case even among yourselves, or permit anyone to discuss it in your presence. Keep your mind free

from any opinion until the case is finally submitted to you. You are excused now until ten o'clock tomorrow morning.

(Thereupon the members of the jury left the courtroom.)

(Argument was presented by counsel for the plaintiff and counsel for the defendant.)

The Court: The motion as to the second count is granted, and it is dismissed. I meant the motion for an acquittal as to the second count is granted, and I will deny it as to the first count.

Mr. Arend: Your Honor, will the jury be so informed in the morning. I think it would be of help to them to know we are proceeding only on Count I.

The Court: Yes, I think so. And the marshal can remove the refrigerator and the box that it came in and the things that were in it from the courtroom. You understand what is to be removed?

The Marshal: Yes, sir.

The Court: The court is adjourned until ten o'clock tomorrow morning.

(Thereupon court was adjourned until ten o'clock a.m., November 14, 1946, at which time it was duly reconvened. All members of the jury were present.)

The Court: Are counsel ready to proceed with the trial of this case of the United States vs. Cutting?

Mr. McCutcheon: Yes, your Honor.

Mr. Arend: Yes.

Mr. Taylor: Has the Government rested, your Honor?

Mr. Arend: Yes, your Honor.

Mr. Taylor: Call the United States Attorney.

Mr. Arend: I reserve the right to argue the case, your Honor.

Mr. McCutcheon: Yes, we stipulate that. [211]

HARRY O. AREND

called as a witness on behalf of the defendant, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. McCutcheon:

Q. Mr. Arend, you have heard the testimony of Mr. Hall on the witness stand that he had never discussed the case with you at any time. Now, we are wondering if that statement was true or false. Was it?

A. I have discussed the case with him; that is, to the extent that I have asked him his story.

Q. Well, that is enough. Now, Mr. Hall then lied when he said he had not discussed the case with you, didn't he? Answer "yes" or "no." Just "yes" or "no."

A. I can't answer that "yes" or "no."

Q. You can't answer that "yes" or "no?"

A. I don't know what was in his mind. You didn't go into it very thoroughly with him, the matter of what you meant with "discuss the case."

(Testimony of Harry O. Arend.)

Q. You understood what we meant, didn't you? Did you?

A. I think I understood what you meant.

Q. Well, do you think that the question was put in a fair and clear manner?

A. No, I don't. Personally, I think the way you put the question—— [212]

Mr. Taylor (Interposing): If the Court please, we object to any personal opinions on it from the District Attorney.

The Court: I think he is entitled to explain what he means.

Mr. McCutcheon: Yes, he is, your Honor, but the explanation must follow the question; isn't that correct?

The Court: Well, it should be called for by the question. I think he is entitled to explain what he means.

A. In my experience in examining witnesses, I have found that when that question is asked, they immediately think that you are trying to discover whether or not someone else suggested certain answers to the witness for him to use on the witness stand, and, naturally, their reaction is, "No, I didn't do anything like that; I didn't discuss it with him."

Q. So, then, you mean to say that Mr. Hall's natural reaction was to lie? You mean that that was his natural reaction?

A. I don't know about that. I can't answer that.

Mr. McCutcheon: Was there any cross-examination?

(Testimony of Harry O. Arend.)

Cross-Examination

By Mr. Berrett:

Q. Mr. Arend——

Mr. Berrett: I wonder, for the benefit of the record, if the reporter would read from the record the questions that were put to Mr. Hall in this regard? [213]

The Court: No, I don't think that is a proper method of examination.

Q. (By Mr. Berrett): Mr. Arend, do you recall the question of counsel to Mr. Hall as asking him whether or not he had been told by you what to say on the stand?

A. That sort of statement was never put to Mr. Hall while he was on the witness stand, as I remember it.

Q. Did you at any time tell him what to say when he would be called on the stand?

A. I did not.

Mr. Berrett: That is all.

Mr. McCutcheon: That is all.

Mr. Taylor: If the Court please, I would like to excuse Mr. Arend at this time for the purpose of recalling him on another matter later, on something we will connect up later.

Mr. Arend: No objection.

(Witness excused.) [214]

STANLEY D. BASKIN

called as a witness on behalf of the defendant, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Taylor:

Q. Mr. Baskin, you were the Federal Bureau of Investigation agent at Fairbanks during the investigation of the disappearance of the stove and refrigerator at Ladd Field? A. I was.

Q. And you were in communication with the Federal Bureau of Investigation agent at Anchorage, Alaska, Mr. Norton? A. Yes.

Q. Will you state whether or not you had ever received any communication from Mr. Norton regarding Mr. O'Neil, M. W. O'Neil?

A. Yes, I did.

Q. And following that communication, did you ever make any search or investigation as to the whereabouts of Mr. O'Neil?

A. Now, that is M. W. O'Neil?

Q. M. W. O'Neil? A. Yes, I did.

Q. What was the extent of that search, Mr. Baskin?

A. I inquired at the personnel office at Ladd Field, the United States employment service at Fairbanks, the Marshal's office, the police department, and the hotels. [215]

Q. Did you make any further investigation?

A. I reviewed the telephone directory, and I don't—yes, I inquired from the power department of the Northern Commercial Company.

(Testimony of Stanley D. Baskin.)

Q. Did you search the records, or have the records of the transportation companies searched?

A. I searched some of them; that is, the Alaska Airlines and Pan American Airways. I did inquire there for about—oh, about six months prior to—well, from around April through December of 1945.

Q. Did you make any search of the city clerk's office or the licensing office who issues driver's licenses?

A. No, I don't think I did inquire at the city clerk's office.

Q. Mr. Baskin, did you ever see the statement of Mr. Cutting which was made before Mr. Norton at Anchorage?

A. I never saw the original statement, no.

Q. Mr. Norton never showed you that statement?

A. No, I never saw it.

Q. Have you ever read it?

A. No. Well——

Q. (Interposing): Did Mr. Norton ever direct you or suggest to you to make a search of the garbage dump out here to see if a washing machine, which he stated had been thrown away, could be found out there?

A. No. [216]

Q. You made no search for that?

A. I did not.

Mr. Taylor: That is all, Mr. Baskin.

Mr. Arend: No cross-examination.

(Witness excused.) [217]

AUDREY CUTTING

called as a witness on behalf of the defendant, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Taylor:

Q. Will you please state your name?

A. Mrs. Audrey Cutting.

Q. Where do you reside, Mrs. Cutting?

A. Anchorage, Alaska.

Q. And are you the wife of the defendant, Percy James Cutting? A. I am.

Q. How long have you and Mr. Cutting been married? A. A little over a year.

Q. And where were you married?

A. Fairbanks, Alaska.

Q. How long have you resided in the Territory of Alaska, Mrs. Cutting?

A. Just about five years.

Q. And where has that residence been in Alaska?

A. Well, it has been in both Anchorage, Nome, and Fairbanks.

Q. And what has been your occupation prior to your marriage to Mr. Cutting?

A. Well, I was a clerk in the purchasing department of the Engineers at Fort Richardson, and I was a vocalist. [218]

Q. What was that?

A. A vocalist, a singer.

Q. Oh, yes.

(Testimony of Audrey Cutting.)

A. And I was secretary to the District Attorney at Nome, and the court reporter to the Honorable Judge Morrison at Nome.

Q. And when did you come to Fairbanks? When did you take up your residence at Fairbanks, Mrs. Cutting?

A. I took up my residence here in 1944.

Q. And what was your name prior to your marriage to Mr. Cutting? A. Audrey Henderson.

Q. Henderson. Now, did you ever engage in any business here in Fairbanks?

A. Yes, I did. I had the Mt. McKinley Ice Cream Company.

Q. When did you start that, Mrs. Cutting?

A. In the year 1945.

Q. And when did you—Have you still got that business? A. I sold it to Mr. Murton.

Q. And when was that sale made?

A. In October of 1945.

Q. Now, where is that business located, Mrs. Cutting?

A. It is located in the Moose Hall on Second Avenue.

Q. And did you have a lease on that building, or a part of it? A. Yes, I did.

Q. What particular portion of the building did you have leased, Mrs. Cutting? [219]

A. Well, I would say the front third of the building.

Q. And what street did that face on?

A. On Second.

(Testimony of Audrey Cutting.)

Q. How many floors did you have leased?

A. Two floors: the ground floor and upstairs.

Q. And what was on the ground floor, Mrs. Cutting?

A. The Mt. McKinley Ice Cream Company was on the ground floor.

Q. Could you state whether or not you sublet any part of the ground floor to any other person?

A. Yes. I sublet a part of the ground floor to Mr. Mears who was my partner in the ice cream business for a refrigeration shop, and then I also sublet another portion to Mr. Andrew J. Hall for an electrical shop.

Q. And what was in the upstairs, Mrs. Cutting?

A. Well, I had an apartment upstairs, but that is all.

Q. Was the apartment up there at the time that you took this building? A. No.

Q. This part of the building?

A. No, it wasn't.

Q. It was constructed after you took the lease?

A. That's right.

Q. Now, how did you have your apartment furnished, Mrs. Cutting? What did you have in your apartment?

A. Well, I had the ordinary furniture that ordinary people would have. [220]

Q. Would you state to the jury what that furniture consisted of?

A. Well, the front room had a davenport and chairs and coffee table and lamp. Both bedrooms

(Testimony of Audrey Cutting.)

had two bedroom sets, and the kitchen had a breakfast nook, a breakfast table and two benches.

Q. Did you have a refrigerator in your apartment?

A. No, I never had a refrigerator.

Q. What kind of a cooking unit did you have in there, Mrs. Cutting?

A. Well, I had a two-burner electric plate sitting on a little table.

Q. Is that the cooking unit you had during all of the time that you were in that apartment?

A. That's right.

Q. When did you move away from that apartment, Mrs. Cutting?

A. Shortly after the first of November.

Q. What year? A. 1945.

Q. And at any time prior to that did you have an electric range such as shown over there?

A. No.

Q. At any time while you had that lease, Mrs. Cutting, did you have a range similar to that stored in that building——

A. No.

Q. ——upstairs? A. No.

Q. Now, what was your husband's occupation at the time you were married?

A. He was the superintendent of the post engineers at Mile 26.

Q. And when did he start on that job, do you know? A. It was the spring of 1944.

Q. And when did he terminate that position?

A. In October of 1945.

(Testimony of Audrey Cutting.)

Q. And why did he terminate that position, Mrs. Cutting?

A. Well, he was given an advancement and transferred to Fort Richardson.

Q. And do you remember the date, or approximately the date that he first went to Fort Richardson?

A. Well, it was the latter part of October.

Q. Of 1945? A. That is correct.

Q. And did he return to Fairbanks after that?

A. No, not after he was finally transferred. First he made the arrangements on the position, and then he came back here and had a clearance and then went back to Fort Richardson, and that all took place in October.

Q. How long prior to that had you and Mr. Cutting married? What did you say was the date of your marriage? A. It was in October.

Q. Then it was the latter part of October that Mr. Cutting went [222] to Fort Richardson to take up his duties down there? A. That is correct?

Q. And what was the date—I forget the date that you said you sold to Mr. Murton.

A. We sold—rather I sold—Mr. Mears and myself sold the ice cream factory to Mr. Murton on the first of October, but Mr. Murton did not actually take possession of the place until the first of November, 1945.

Q. Then after Mr. Cutting went to Anchorage, did you later go to Anchorage?

A. That is correct.

(Testimony of Audrey Cutting.)

Q. And what, if anything, did you take with you to Anchorage, Mrs. Cutting?

A. Well, I took all of our household possessions.

Q. Among those, what was the principal articles among those household possessions?

A. Well, I didn't take any of the furniture. I let Mr. Murton have the furniture, but I took all of our blankets and bedding, and we had purchased an electric range and refrigerator the first of September, and I had had that packed, and we took that with us.

Q. Where was that refrigerator kept, Mrs. Cutting?

A. I stored it in the passageway. We had a good deal of storage there between Mr. Mears and myself, and there was only room for this refrigerator in this passageway. [223]

Q. And where was the electric range stored?

A. The electric range was stored in the back there of the Schmidt building where Mr. and Mrs. Schmidt lived.

Q. How long had you had that electric range and refrigerator, Mrs. Cutting?

A. Well, as I said, we purchased that the first of September, 1945.

Q. And who had you purchased it from?

A. From a Mr. O'Neil.

Q. Do you remember his initials?

A. Yes. M. W. O'Neil.

Q. And would you state whether or not there were any other articles that were purchased at the

(Testimony of Audrey Cutting.)

time that you purchased the refrigerator and the electric range?

A. Well, we purchased a washing machine and Mexican dishes and waffle iron.

Q. What make of a refrigerator was it?

A. It was a Westinghouse.

Q. And what make of a range was it?

A. Westinghouse.

Q. Do you know the year model of the electric range, Mrs. Cutting?

A. No, I don't. It wasn't a new model, that I know.

Q. Would you take a look at that range, Mrs. Cutting, and state whether or not that was the range purchased by you? [224]

A. Well, that is not the range that we purchased.

Q. Why do you state that that is not the range that was purchased by you?

A. Because in the first place the oven was raised; it was an old-fashioned type.

Q. Would you just step over there and illustrate to the jury the construction of the range that you purchased from Mr. O'Neil? Step to one side there and just show how the range hood was.

A. Well, if this had legs, I could show better. It wasn't sitting this high. The oven was way up. There were four burners. The oven was up, and there wasn't any place underneath to store anything. This has a storage compartment, but that isn't it. There wasn't any storage compartment.

(Testimony of Audrey Cutting.)

Q. Well, you may resume your seat, Mrs. Cutting.

(The witness returned to the witness stand.)

Q. Now, you mean, then, that the oven was built above the general level of the burners?

A. That's right.

Q. When did you first see Mr. O'Neil?

A. Well, Mr. O'Neil was sort of an infrequent purchaser of ice cream, as most people come in and buy ice cream every now and then; that is the way he was. I don't know who he was.

Q. Did you know his name prior to the time that you purchased the electric range from him?

A. No, I did not. [225]

Q. And about what was the date that you purchased that? A. About the first of September.

Q. And would you state to the jury just what negotiations you had leading up to the purchase of this equipment that you have described?

A. It would seem that everyone knew, I suppose, that my husband and I were planning on getting married, so naturally we were looking for furniture and household things, and I had mentioned to several of my friends that if they possibly would ever find an electric range or refrigerator or knew of anyone that wanted to sell one to please let us know. Well, Mr. O'Neil came in every so often and bought ice cream, and one day he said to me, he said, "I have some household furniture for sale, and I have a washing machine and electric range and refrig-

(Testimony of Audrey Cutting.)

erator for sale," and he said, "Would you like to buy it"; and I said, "Well, I would want to see it first, but," I said, "so far as the furniture is concerned, we just bought our furniture, but if you will bring the range and refrigerator and washing machine here, and, if it is anything at all, why, we would like to buy it;" and he says, "All right." He says, "I already have it on a truck," he says; "I was planning on going to Anchorage, and, if I don't sell the furniture here, I want to sell it there," and he says, "I will bring it around tomorrow night." Well, we waited the next night, but he didn't come. Then finally he came on Saturday night. [226]

Q. And about what time did he arrive there, Mrs. Cutting?

A. Well, it was after nine o'clock in the evening, because I remember we had just finished making ice cream.

Q. And did he have these things on the truck?

A. Yes, he did.

Q. And what happened then?

A. Well, Sandy and I were there, and, naturally, I left it in his hands mostly, because I wanted him to check particularly on the mechanism, and I felt that he knew more about it than I did, so I let him negotiate with Mr. O'Neil.

Q. And were you present at the time of those negotiations? A. Yes, I was.

Q. What was the result of those negotiations?

(Testimony of Audrey Cutting.)

A. Well, we decided to purchase it, but Mr. O'Neil said that he was leaving that evening for Anchorage, and, if we could pay him in cash; well, he didn't have the, or Sandy didn't have the whole full \$300.00, so I loaned the \$115.00 to make up the purchase price on it.

Q. And then what did you do?

A. I asked him if he could give us a bill of sale on the range and refrigerator and washing machine, and he said, yes, he could, so I drew up one.

Q. Did he give you a bill of sale?

A. I drew the bill of sale up.

Q. I hand you a piece of paper, Mrs. Cutting. Will you state what that is? [227]

A. That is a bill of sale.

Q. Who is it signed by? A. Mr. O'Neil.

Q. What is the initials? A. M. W.

Mr. Taylor: May I have that marked for identification?

(Thereupon a Bill of Sale, dated September 1, 1945, was marked by the clerk of the court as Defendant's Identification A and is in words and figures as follows:)

“Bill of Sale

“That for the consideration of \$300.00 (three hundred dollars), M. W. O'Neil of Fairbanks, Alaska, sold to P. J. Cutting, the following items of household items:

“One Westinghouse Electric Range,

“One Montgomery Ward Washing Machine,

(Testimony of Audrey Cutting.)

“One Westinghouse Refrigerator,

“One Waffle Iron,

“And One Set of Mexican Pottery Dishes.

“M. W. O’Neil assigns all interest of said goods and further claims that household goods are clear of any indebtedness.

“Dated this First of September, 1945, in Fairbanks, Alaska.

“Signed M. W. O’Neil

Bellingham, Wash Gen Del

“Witnessed Audrey Henderson”

Q. And you state that this is the bill of sale that was given you on the evening of the day that you——

A. (Interposing): That’s right.

Q. ——purchased the articles?

A. That’s right.

Mr. Taylor: If the Court please, we would like to offer this in evidence.

Mr. Arend: Your Honor, we object to it. I don’t believe that this party who has signed the name has been sufficiently identified to even establish that there is such a man or that this is his signature.

The Court: Objection overruled. It may be admitted.

(Thereupon Defendant’s Identification A was marked as Defendant’s Exhibit No. 1 by the clerk of the court.)

(Testimony of Audrey Cutting.)

Q. Would you read that to the jury?

(Thereupon the witness read Defendant's Identification A as hereinabove set forth.)

Q. Now, after getting that bill of sale, Mrs. Cutting, what was done with the refrigerator?

A. Well, the refrigerator was unloaded there at the ice cream place and put in this passageway. There was only room in the whole place just in this passageway.

Q. And what was done with the electric range?

A. The electric range was taken over to the Schmidt building and stored in the back part. [229]

Q. And what was done with the washing machine?

A. And the washing machine was also left there.

Q. And the other articles that are mentioned in the bill of sale, where were they placed?

A. I took those upstairs with me—the dishes and waffle iron.

Q. Did you ever use the refrigerator in the place down there, Mrs. Cutting?

A. No, I did not.

Q. Did you ever have other refrigeration units in the ice cream parlor? A. That's right.

Q. And did you ever use the range upstairs?

A. No.

Q. Were they, either of them, ever installed in the building or the ice cream company?

A. No.

(Testimony of Audrey Cutting.)

Q. What did you do with the washing machine?

A. Well, I had my husband look the washing machine over, because it was an old type of washing machine. I wanted to see if it was well worth shipping. He said it wasn't, because there was a crack in the tub, and it couldn't be repaired, so he took it out to the dump and dumped it.

Q. Was any effort made to repair it?

A. No.

Q. You just stated it wasn't worth shipping. Had you any plans [230] on shipping this stuff some place?

A. Well, by that time we knew that he was going to be transferred to Anchorage. There had been rumors of it.

Q. And is that the reason that you didn't set the range up in your apartment?

A. That's right, because I had offered the place for sale in September.

Q. And it was your intention to move the refrigerator and stove and other things to Anchorage?

A. That's right.

Q. Mrs. Cutting, just state to the jury what Mr. Cutting's physical condition was at the time that these articles were purchased from Mr. O'Neil?

A. Well, Mr. Cutting doesn't feel very well at times, and I know that he can't lift anything.

Q. Just state, to your knowledge, what his physical condition is. What is the matter?

A. Well, he has five broken vertebrae in his back, and I know that he can't stoop over, because I have had——

(Testimony of Audrey Cutting.)

Q. (Interposing): Just a moment. We will get into that later. When did that happen?

A. That happened in the Gillam wreck.

Q. Mr. Cutting was in that wreck?

A. That's right.

Q. You may go ahead about his condition then.

A. And as a result of the Gillam wreck, he had five vertebrae broken, and I know very well that—well, it is hard for him to move around, and he can't stoop over, and he can't lift things.

Q. Since you have been married, have you ever seen Mr. Cutting lift any heavy objects?

A. I have not.

Q. Would it be possible for Mr. Cutting to carry an electric range or refrigerator up a stairway?

A. I would say that it was an impossibility.

Q. What, if anything, does he wear for his back?

A. He wears a support, a harness; it is almost like wearing the back of chair strapped to him.

Q. What is it made out of? A. Steel.

Q. And does he wear that all of the time?

A. He does.

Q. And without that, or even with it, it is impossible for him to lift any weights?

A. That is correct.

Q. You have seen that harness, I suppose, Mrs. Cutting? A. Yes.

Q. Where is that harness now?

A. It is on Mr. Cutting.

(Testimony of Audrey Cutting.)

Q. Now, you say that Mr. Cutting went to Anchorage in the [232] latter part of October to assume his duties at Anchorage?

A. That is correct.

Q. Is that at Fort Richardson?

A. That is correct.

Q. And what position did he hold there?

A. He was in charge of operations for the post engineers.

Q. And did you go down there later?

A. I did.

Q. And I believe you stated that you packed up all of your equipment. How did you send that down, Mrs. Cutting?

A. I sent it down in an N. C. truck.

Q. And do you know who was driving that truck? A. Mr. Hardy.

Q. And did you pack this material, this equipment that was sent down?

A. Well, I packed all of the household items, with the exception of the range and refrigerator.

Q. And who packed those?

A. I asked Mr. Hall to pack them for me.

Q. And did he do it? A. He did.

Q. Did he make the boxes that they were in?

A. That is correct.

Q. And where did he pack them?

A. He packed the refrigerator in the ice cream building, and the [233] range in the Schmidt building.

(Testimony of Audrey Cutting.)

Q. Where is the Schmidt building located, Mrs. Cutting?

A. Well, it is right next door to the Glover's tire shop in the Pioneer Hotel.

Q. And is that the building that is occupied partly by the Veterans of Foreign Wars?

A. That's right.

Q. And you stated you shipped these down to Anchorage by Mr. Hardy, Leo Hardy?

A. That is correct.

Q. Did you go down there at the same time, Mrs. Cutting?

A. I shipped the items first, and then I left a few days later by train.

Q. And where next did you see those boxes of equipment, household furnishings, that you had sent down?

A. They were on the truck at the N. C. Company.

Q. In Anchorage? A. That is correct.

Q. Were all the boxes on the truck, Mrs. Cutting? A. Yes, they were.

Q. And was that in the N. C. store?

A. That is in the N. C. warehouse.

Q. And how long after you got to Anchorage did you see those boxes on the truck?

A. Well, when I arrived, I asked my husband if he knew if they [234] had arrived, and he said, yes, they were there, and, well, I didn't see them for at least a week.

(Testimony of Audrey Cutting.)

Q. And did you go to this warehouse to see them?

A. No. I went there with my husband and Mr. Fowler.

Q. And what did you do at that time, Mrs. Cutting, if anything?

A. Well, we moved the range and refrigerator out of the truck onto a truck that we had borrowed and stored it at Mr. Fowler's place.

Q. Where did you store it?

A. We stored it at Mr. Fowler's home.

Q. Why did you store those articles there, Mrs. Cutting?

A. Well, we were—we had rented a place at the Fort quarters at the Fort.

Q. By "Fort" do you refer to Fort Richardson?

A. That is correct, at Fort Richardson, and they already had electric ranges and refrigerators in their quarters.

Q. And there was no necessity of taking the range and refrigerator that you had sent down, then, to Fort Richardson? A. That is correct.

Q. What did you do with the other items, the other boxes that—

A. (Interposing): Well, we left them on the truck with the idea of taking them out to the post and unloading them at the quarters.

Q. Did you ever take them out to the post, then, Mrs. Cutting? A. No, we didn't. [235]

Q. Why didn't you?

A. Because we bought a home from the N. C. Company.

(Testimony of Audrey Cutting.)

Q. And where was that located?

A. That was located at 733 Fifth.

Q. And did you move them? Did you ever move the refrigerator and the range to the home that you purchased?

A. No, we didn't.

Q. Why?

A. Well, we were just about ready to when it was taken away from us.

Q. By who?

A. By the Federal Bureau of Investigation.

Q. Did you talk to any of the—did any of the Federal Bureau of Investigation men tell you why they were taking the stove and refrigerator?

A. They didn't tell me why.

Q. When did you first learn that the Federal Bureau of Investigation was interested in those particular items?

A. When they came to my home.

Q. Well, Mrs. Cutting, when did you first become suspicious that there might be something wrong in regard to the range and the refrigerator?

A. Well, my husband came home——

Q. (Interposing): Just state about when.

A. Well, I would judge about a week before the Federal Bureau [236] investigator came to the house.

Q. Now, go ahead and tell why you became suspicious of it.

A. Well, we were staying at the Anchorage Hotel at the time, and my husband came home, and he told me that he had been called to the

(Testimony of Audrey Cutting.)

Military Intelligence office at Fort Richardson and asked if he knew where there were any missing ranges and refrigerators; that there were some missing at Ladd Field; and they also asked him if he knew—if he had bought any refrigerators and ranges. Well, we just—we talked it over and we suddenly realized that maybe we had been duped in buying the refrigerator and range and that, well, the best thing we could do was to deny having it until we knew what the story was.

Q. And did you deny having them?

A. Yes, we did.

Q. When did you make that denial and who to?

A. Well, as I said, about a week later the Federal Bureau of Investigation called my husband and asked him to call at their office, and, as a result of the conversation at the office, they came to our home and that time was when they talked to me.

Q. What time of day did they come to your home, Mrs. Cutting?

A. Well, it was in the evening; it was after eight o'clock.

Q. And what was said at that time regarding this refrigerator and range? Did you still deny that you had them? A. I did. [237]

Q. And what else was said or done there that evening by—or, just state who was in the home at the time, Mrs. Cutting?

A. Well, my husband was there, and my daughter and myself.

(Testimony of Audrey Cutting.)

Q. How old is your daughter, Mrs. Cutting?

A. She is fourteen, going on fifteen.

Q. And you say it was in the evening that the F. B. I. men came there? A. That is correct.

Q. And what did they say or do?

A. Well, first they asked me if I knew where there was any missing refrigerator and ranges, and I said I didn't know where there were any missing refrigerators and ranges and why did they ask me if there were any missing refrigerator and range, and Mr. Baskin said, "I will ask the questions, and you answer them." And so he wanted to know if I had ever had a range and refrigerator in the apartment upstairs of the Ice Cream Company, and I told him, no, that we never did have a range and refrigerator up there; so then he wanted to know if we had bought or purchased a range or refrigerator here—and, of course, though I don't mind saying it, I was scared to death—and I said, no, we hadn't, because I realized then that we had been duped into buying something that had been stolen.

Q. Do you know—or, who thought so?

A. We thought so. [238]

Q. And then what did they do?

A. Well, then they wanted to search the house, and my husband told them that he didn't think that was fair, inasmuch as they didn't have a warrant, and he objected to it; and they said, "Well, we are here already. You might as well let us look at the house, because we are going to anyway."

(Testimony of Audrey Cutting.)

Q. Then what did they do?

A. They went through the house.

Q. How big a house was that, Mrs. Cutting?

A. It was about six rooms.

Q. One floor, or two or three?

A. Two floors.

Q. And what rooms were in the downstairs?

A. Well, there was a front room, kitchen, bedroom, and a large back porch.

Q. What is upstairs? A. Two bedrooms.

Q. And who occupied those bedrooms?

A. Well, my daughter occupies one of them.

Q. Now, in all of the time you were having conversation with the F. B. I. men downstairs—just a moment, the F. B. I. men; who do you mean by “F. B. I. men”? Do you know their names?

A. Well, there was Mr. Baskin and Mr. Norton.

Q. During the time you had your talk with these men, was your daughter present at all times? [239]

A. She was downstairs at the time the conversation first started, and later when they, before they decided to search the house, I thought it wasn't best for her to listen to all of it, so I sent her up upstairs.

Q. Now, in carrying out this search, where did the F. B. I. men go?

A. First they went through the main floor; that is, the front room and bedroom and kitchen and back porch, and the basement.

Mr. Arend: If the Court please, now we object to any further questioning about the search, unless

(Testimony of Audrey Cutting.)

it is first shown that something was taken as a result of the search; otherwise it is immaterial in this case.

The Court: Objection sustained.

Mr. Taylor: Well, if the Court please, I believe Mr. Baskin stated himself that he conducted a search in the place. I think we have a right to show what was done in regard to that search to rebut some of the statements made by Mr. Baskin. They opened up the subject themselves, your Honor.

The Court: The objection is sustained.

Q (By Mr. Taylor): Mrs. Cutting, did they go in the basement? A. Yes, they did.

Mr. Arend: We object to that, your Honor, and ask that the answer be stricken.

The Court: It may be stricken.

Q. (By Mr. Taylor): Mrs. Cutting, how is your—how is the [240] house in Anchorage heated?

A. It is heated by oil.

Mr. Arend: We object to that as irrelevant and immaterial and ask that the answer be stricken.

The Court: The objection will be overruled.

Q. How is it heated, Mrs. Cutting?

The Court: You are objecting to the question, "How is it heated at the present"? That is immaterial.

Mr. Arend: And move that the answer be stricken.

The Court: It may be stricken.

Q. (By Mr. Taylor): What sort of furnace do you have in the basement, Mrs. Cutting?

A. Oil furnace.

(Testimony of Audrey Cutting.)

Q. And do you have any coal in the basement?

A. No.

Mr. Arend: We object to that, your Honor, as irrelevant and immaterial and move again that the answer be stricken.

The Court: It may be stricken.

Mr. Taylor: If the Court please, I can't understand the court's ruling on this.

The Court: It makes no difference what kind of heating plant they have now. You are speaking of the present, what is in the cellar now.

Q. (By Mr. Taylor): At the time that the search was made, what kind of heating apparatus did you have in the house, Mrs. Cutting? [241]

Mr. Arend: We make the same objection: that it is irrelevant and immaterial, your Honor.

The Court: Objection overruled.

A. It was an oil furnace.

Q. And did you at that time of that search have a half a ton of coal in the basement? A. No.

Q. Now, following this search by the F.B.I. agents, did you have any further conversation with them, Mrs. Cutting? A. Yes, we did.

Q. Where did that take place?

A. That took place in the Federal Bureau of Investigation office.

Q. In Anchorage? A. In Anchorage.

Q. And who was present at that time, Mrs. Cutting? A. Mr. Norton.

Q. And who else?

A. And Mr. Cutting and myself.

(Testimony of Audrey Cutting.)

Q. And about what time of day did that take place: in the morning or afternoon or evening?

A. It was in the afternoon.

Q. And what was the subject matter of that conversation?

A. Well, he called my husband up, and he said, "I would like to have you call at the office." So we—of course, we had been lying awake all night thinking about it, and we knew [242] that something was the matter, and we didn't know what to do. So when Mr. Morton called us both in the office, he said, "Now, look," he says, "we know that you bought and purchased a range and refrigerator, and we want to know all about that, the truth and nothing but the truth and the whole truth." And so both myself and my husband told Mr. Norton that we were going to tell him the truth about it, and he said, "Well, it had better be the truth, because, if it isn't, I am not interested in listening to it." So I told him, I said, "Well, we have a bill of sale for the range and refrigerator," and so then he told me to go home and get the bill of sale, and I went home and I got the bill of sale, and I came back and gave it to him.

Q. Is that the bill of sale you just read to the jury here just a few moments ago, Mrs. Cutting?

A. Yes, that's right.

Q. And what else was done at that time?

A. Well, he asked us the whole story, and we told him how we got it, what we had bought, and I told him that I had part of the dishes that I had purchased at the time packed in the refrigerator.

(Testimony of Audrey Cutting.)

Q. At that time did Mr. Norton prepare a statement?
A. Yes, he did.

Q. And was you there at the time that it was prepared?

A. Well, I was there when he was typing all of our answers. [243]

Q. And was you there when Mr. Cutting signed it?
A. No.

Q. Was there any other agent besides Mr. Norton there?
A. No.

Q. Do you know an agent by the name of Wright?
A. I don't believe I do.

Q. At the time you was talking to him, you say Mr. Norton was taking this down, taking down the statements?
A. That's right.

Q. And do you know whether or not Mr. Cutting afterwards signed a statement that was prepared by Mr. Norton?

A. Well, he told me that he signed it.

Mr. Taylor: May we have a short recess, your Honor?

(A ten-minute recess was taken, after which court was duly reconvened. All members of the jury were present.)

The Court: Are counsel ready to proceed with the case?

Mr. Taylor: Defendant is ready, your Honor. You may take the witness.

The Court: Yesterday a motion was made for a judgment of acquittal on the matters charged in Count II of the Indictment. The motion was

(Testimony of Audrey Cutting.)

granted, and I have signed the judgment of acquittal as to Count II, so that is out of the case.

Cross-Examination

By Mr. Arend:

Q. Mrs. Cutting, who owns the Moose [244] Hall? Who did own the Moose Hall at the time you lived there?

A. When I first lived there, it belonged to Mr. and Mrs. Morrison.

Q. That was the auctioneer? A. Yes.

Q. And then who purchased it from them?

A. Mr. and Mrs. Ben Grueneich.

Q. Do you know when the transfer was made between these two parties?

A. It was sometime in July.

Q. Of 1945? A. That is correct.

Q. Do you know Mr. Charles V. Cors?

A. Yes.

Q. Did he do any work on the apartment upstairs? A. Yes.

Q. Now, you have mentioned to the jury here a man by the name of M. W. O'Neil. Will you please describe him to the jury?

A. Well, he was—I imagine he looked like he was around about forty years old. He had a rather fair complexion and light brownish hair.

Q. Was he a big man?

A. Blue eyes, and it seemed that he was getting gray, just a little bit, along the temples—grayish.

Q. Was he a large man, or a small man?

A. No.

(Testimony of Audrey Cutting.)

Q. Did he have a family?

A. Well, I didn't know.

Q. Oh, I am sorry. You said, no, he was a large man or small man.

A. He was a medium-sized man.

Q. And you don't know whether he had a family?

A. No.

Q. Where did he live here in town?

A. I don't know.

Q. Where did he work?

A. That I don't know.

Q. Do you know whether he owned the truck that he brought the household goods on to your place?

A. No, I don't.

Q. Was it a U-Drive truck?

A. He never said.

Q. Well, did you look to see?

A. Not particularly.

Q. Can you describe the truck to us?

A. Well, it was red colored, and it had a band around the side of it about half-way.

Q. Did you check the serial number on the range that you bought from this man? [246]

A. No.

Q. Did he show you any evidence of title that he had to the range and the other household goods?

A. No.

Q. When did you first learn that you would not need the refrigerator or the range at Fort Richardson, these items that you claim that you had bought from Mr. O'Neil?

(Testimony of Audrey Cutting.)

A. When my husband first rented the quarters there.

Q. That was the latter part of October?

A. That was the latter part of November.

Q. The latter part of November?

A. That is right.

Q. Why did you buy the range and the refrigerator from Mr. O'Neil?

A. Because we needed one; we wanted one.

Q. You know Mr. Hall, of course. You said he crated the box that is standing there?

A. That's right.

Q. He made that crate. Now, I would like to have you turn your attention to December 24, 1945, in the Model Cafe, during the noon hour. Did you have lunch with Mr. Hall that day?

A. That is correct. He invited me to lunch.

Q. Now, did you, in a conversation with Mr. Hall at that time, in his presence and with no one else there in the immediate vicinity, make this statement to Mr. Hall: that he should [247] stick with the story that he did not know where you and your husband obtained the electric range and refrigerator which were taken to Anchorage and, if questioned, to state that he supposed you obtained them at the time and place you got the furniture?

A. I did not.

Q. And did you add, "You are the only one that can really do us any harm, and, if you tell anything, we will go down together"?

A. I did not. I asked for his help.

(Testimony of Audrey Cutting.)

Q. You say you did ask for his help?

A. That is correct.

Q. In what way?

A. Because I was trying to find trace of Mr. O'Neil, and I told him of our predicament.

Q. Now, I will call your attention to the first of October, on or about the first of October. Did you make an offer to Mrs. Grueneich, in her apartment, which is located on the first floor of the Moose Hall, to sell her a Westinghouse electric range and refrigerator? A. I did not.

Q. Did you ask her what she would pay for an electric range and refrigerator at that time and place? A. No.

Q. Did Mrs. Grueneich state to you that, after all if you had [248] purchased the range and refrigerator, you had invoices on the same and ought to know how much to ask for them?

A. She did not.

Q. I show you Plaintiff's Identification No. 13, and ask you if you recognize the signature at the bottom of that paper. A. That's right.

Q. Whose is that?

A. That is my husband's signature.

Q. Have you seen that before, that identification?

A. No, I don't believe so.

Q. Didn't you give that identification to Mr. Hall, or tell Mr. Hall that you were going to send that identification to him to be placed in the files and records at Ladd Field?

A. Mr. Arend, I have never seen this before.

Q. You never have? A. I never have.

(Testimony of Audrey Cutting.)

Q. You never made such an offer?

A. I never made such an offer.

Q. To Mr. Jackson—— A. No.

Mr. Arend: No further questions.

The Court: Any further questions of this witness?

Mr. Arend: I would like to ask one more question.

The Court: Very well.

Q. (By Mr. Arend): Mrs. Cutting, has a doctor ever recommended [249] a fission operation for Mr. Cutting's back injury? A. That is correct.

Q. And that was last winter?

A. That is correct.

Q. Has that operation been performed?

A. No.

Mr. Arend: That is all.

Redirect Examination

By Mr. Taylor:

Q. Mrs. Cutting, is that operation going to be performed? A. Yes, it is.

Q. When?

A. Well, we were hoping when this trial was over.

Q. What is your physical condition at the present time, Mrs. Cutting?

Mr. Arend: We object to that as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Mr. Taylor: That is all.

(Witness excused.) [250]

CHARLES WARD

called as a witness on behalf of the defendant, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Taylor:

Q. Will you state your name, please?

A. Charles Ward.

Q. Where do you reside, Mr. Ward?

A. 115 Eighth.

Q. In Fairbanks? A. Yes, sir.

Q. How long have you resided at Fairbanks?

A. Since May of '43.

Q. How long have you lived in Alaska?

A. Since that time.

Q. You came from the States here?

A. Yes.

Q. What is your occupation at the present time, Mr. Ward?

A. I am in business for myself—rug and furniture cleaning business, reupholstering.

Q. Will you state whether or not you have worked for the government here at either Ladd or Satellite Field?

A. I worked for them constantly from May of '43 until June of '46. [251]

Q. Where did you work from May '43 on?

A. From May '43 until February, '45, I worked at Ladd; from February of '45 until the first of July of '45, I was at Satellite.

(Testimony of Charles Ward.)

Q. And what were you doing at Ladd Field? What was your particular position there?

A. From July of '45 until June of '46, I was in the stock record section.

Q. Have you been in the stock records during all of your time at Ladd Field——

A. No, sir.

Q. ——and Satellite Field?

A. No, sir. From May of '43 until February of '45, I was a catskiner.

Q. And what were you doing at Satellite Field, Mr. Ward?

A. I was stock clerk there.

Q. Are you acquainted with Mr. Cutting, the defendant in this case?

A. Yes, sir. He was my superior there.

Q. At Satellite Field. Had you known him prior to going to Satellite Field?

A. Just met him a few times, when I hauled coal out there from Ladd Field.

Q. Was your job an office job, Mr. Ward?

A. Yes, sir.

Q. Now, would state whether or not there were any ice boxes, or refrigerators, or ranges at Satellite Field?

A. There were only two frigidaire, or refrigerators, at Satellite that I knew of. One was a kerosene-burning electrolux.

Q. Both of them?

A. No, one of them was an electric.

(Testimony of Charles Ward.)

Q. Do you know what make that was?

A. No, sir, I don't.

Q. And ranges, how about the ranges?

A. There was only one of those that I know of.

Q. What was the make of that?

A. I don't know.

Q. Now, Mr. Ward, would you state to the jury, in bringing supplies and materials and equipment into Satellite Field, or taking it out of there, what was the procedure to be followed?

A. Well, before we could get off Ladd Field with it, we had to have a tally-out signed by some authorized person to get through the gate with whatever we might be hauling; we took it into Satellite. Of course, it would be the same taking it from Satellite to Ladd; we had to have a tally-out from Satellite to get off the field.

Q. When material or equipment was brought in from Ladd Field to Satellite, what, in the way of record, was made regarding that stuff that came in?

A. I checked that in myself while I was there.

Q. And in stuff leaving Satellite Field, who made made out the tally-out sheets there?

A. I made practically all of them out. In fact, I believe I made all of them out whenever I was there.

Q. And did you sign them?

A. No, sir, Mr. Cutting signed them.

Q. Now, was that tally-out slip required for everything leaving Ladd Field or leaving Satellite Field?

(Testimony of Charles Ward.)

A. Yes, sir. You couldn't get through the gate with anything without one.

Q. Why couldn't you get through the gate?

A. The M.P.s demanded that you had a tally-out slip.

Q. And what became of the tally-out sheet when you went out?

A. The M.P.s kept that, and it is my understanding that they kept them on file.

Q. And do you know where they were filed?

A. No, sir, I don't.

Q. Now, how long were you at Satellite Field, Mr. Ward?

A. I believe it was February 12, when I went out to Satellite, and I was transferred back the following July 1.

Q. Why were you transferred on July 1, Mr. Ward?

A. That is when they were closing Satellite down.

Q. And when did they start to close Satellite?

A. It was during the month of April, I believe.

Q. And what were your duties in regard to closing the field? [254]

A. To return all engineer equipment and stock back to Ladd Field.

Q. Now, engineer equipment and stock. What do you mean when you refer to it as engineer stock?

A. The stock is miscellaneous parts and maintenance supplies; your equipment is the cats and trucks that weren't necessary in the maintenance of Satellite Field.

(Testimony of Charles Ward.)

Q. Now, did that include these ranges and refrigerators that you said were at Satellite Field?

A. Yes, sir.

Q. And in your duties as stock and record clerk there, did you check out any refrigerators or ranges?

A. I checked one electric refrigerator and one electric range.

Q. Do you know who took that out?

A. No, sir, I don't.

Q. Would you have any record of that?

A. It should be on record, but I don't know just where it would be, because there were trucks from Ladd Field as well as our own that was hauling that merchandise in.

Q. Now, you stated in going out the gate, the M.P.s were there? Just what did they do?

A. Well, they would ask you for a tally-out. If you didn't have one signed by Mr. Cutting, you were sent back.

O. And did they check the contents of trucks against the tally-out sheets? [255]

A. Practically always, yes.

Q. And was that quite a close scrutiny?

A. Well, it was close enough so that they caught a half-inch wood chisel that wasn't on a tally-out.

Q. Just how did that take place?

A. I had borrowed this wood chisel from one of those carpenters there. It was one of his own personal tools. I didn't have a tally-out on it, and it was lying on the seat beside me, and he asked me, "Whose wood chisel is that?" I said it belonged

(Testimony of Charles Ward.)

to a carpenter down there; it had his name on it. He said I had to have a tally-out on that. I said, "Can't we call him?" But he said, "No, you have to have a tally-out." We didn't have time to go back that night, because we were riding back and forth with another man, so we had to leave the chisel behind and pick it up the next morning.

Q. Did you find out through your travels through the gate, that the M.P.s were quite diligent in the discharge of their duties in requiring a tally-out sheet on every bit of material that went out of there?

A. Much more at Satellite than they were at Ladd.

Q. Do you know where those records would be at the present time; that is, the tally-out sheets that were picked up by the M. P.s?

A. It is my understanding that those are kept at Headquarters. I am not sure. [256]

Q. Is that headquarters at Ladd? A. Yes.

Q. Or headquarters at Satellite?

A. At Ladd.

Q. Now, you state that that base was to be closed on July 1 and you left there July 1, you said, Mr. Ward?

A. I believe it was the third when I actually left there.

Q. And did you make any search or inspection as to equipment that had been left out there?

A. I went through all unoccupied buildings other than those that were under direct army jurisdiction themselves.

(Testimony of Charles Ward.)

Q. And what did you find?

A. Nothing. We locked the doors. In fact, we nailed them shut.

Q. And what time was that?

A. That was the last week of June. I don't know the exact date that that would be.

Q. Well, according to that, then, Mr. Ward, would it be possible for any range, electric range or refrigerator, to have been on Satellite Field on October 22, 1946, according to the records?

A. Not that I can see, there wouldn't be, no. It so happens that I had charge of those same cards when I was out here at Ladd, and there was never any order came through like that being returned to Satellite, and I know that there were none there when I left. [257]

Mr. Taylor: You may take the witness.

Cross-Examination

By Mr. Arend:

Q. Did you prepare all of the tally-out sheets during that time?

A. Ninety-nine per cent of them.

Q. Who might have prepared any of the others?

A. Mr. Cutting was the only other person who prepared any of the others.

Q. I show you Plaintiff's Identification 13 and ask you if that bears any of your handwriting.

A. No.

Q. Did you ever see that tally-out sheet before?

A. Well, I couldn't say as to that. I filed the duplicate copies of them.

(Testimony of Charles Ward.)

Q. Where at? A. At Satellite.

Q. Does it bear Mr. Cutting's handwriting?

A. Yes, sir.

Q. Where? A. Right here.

Q. Anywhere else except the signature?

A. Well, it all looks familiar. Yes, I would say it is all his handwriting.

Mr. Arend: If the Court please, we offer this now as having been fully identified. We offer it for the entry there [258] of two electric ranges. There are other entries, but we make only the offer for the two electric ranges, and we ask that the jury may be instructed to disregard anything else on the exhibit.

Mr. Taylor: If the Court please, we object to the instruction of this, because there is no identification of the ranges on there, except it is electric heaters and electric ranges. There is no showing that they are the range which is set out by, identified by, number in the Indictment. There is no connection with the charge here whatsoever. It is dated June 5, 1945.

The Court: May I see it?

(The instrument was handed to the Court.)

The Court: It may be admitted.

(Thereupon Plaintiff's Identification No. 13, hereinabove set forth, was marked by the clerk of the court as Plaintiff's Exhibit H.)

(Testimony of Charles Ward.)

Q. (By Mr. Arend): Mr. Ward, I show you Plaintiff's Exhibit C, being a photograph showing several buildings, two of which buildings have a letter for identification over them. Will you state, of your own knowledge, whether or not these buildings contained a Westinghouse electric range during the time you were at Satellite?

A. Well, it is hard to say. It is hard for me to identify those buildings. The one that is marked "A" looks like it might be [259] the one that Mr. Cutting occupied when the roads were bad, and he was unable to go back and forth from town, and that one building did have one electric frigidaire in it that I was speaking of a while ago, that I was speaking about awhile ago.

Q. Did it have a Westinghouse electric range?

A. It had an electric range, but what make, I don't know.

Q. I show you Plaintiff's Exhibit B and ask you if you know what that represents?

A. Yes. That is the way it was when I left the base; that is the way we nailed the door shut and put the off-limit signs up.

Q. Will you state if that is the cabin Mr. Cutting occupied when he stayed at the base?

A. Yes, it looks like it is. I can tell by the office in the back there, and the building I occupied was this type of building.

(Testimony of Charles Ward.)

Q. Do you see the same building in Plaintiff's Exhibit C?

A. It looks as though this one marked "A" is the same building. yes.

Mr. Arend: That is all.

Redirect Examination

By Mr. Taylor:

Q. Mr. Ward, when you made your inspection to see that everything was off the base, did you look in that particular building? [260]

A. Yes, sir. In fact, I nailed the door up.

Q. There was no range or refrigerator in that building?

A. There was nothing, no. I helped Mr. Cutting move his clothing out and bring it to town.

Recross-Examination

By Mr. Arend:

Q. When was that?

A. That was the last week of June.

Q. The last week of June? A. Yes.

Q. You were never out there before?

A. I was just out there casually was all.

Mr. Arend: That is all.

Mr. Taylor: That is all.

(Witness excused) [261]

SYLVIA HENDERSON

called as a witness on behalf of the defendant, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Taylor:

Q. Will you just tell the jury your name?

A. Sylvia Henderson.

Q. You are the daughter of Audrey Cutting?

A. Yes.

Q. That testified here before? A. Yes.

Q. How old are you, Sylvia?

A. I am fourteen, going on fifteen.

Q. And Mr. Cutting, the defendant here, is your step-father? A. Yes.

Q. Where do you reside now, Sylvia?

A. In Anchorage.

Q. Did you ever reside in Fairbanks?

A. Yes.

Q. Can you recall about how long you lived here?

A. Oh, about a year.

Q. And where did you live, Sylvia?

A. Oh, part of the time I lived on Second.

Q. Just a little bit louder, Sylvia, so that the jury and the [262] court reporter and the court can hear you.

A. For part of the time we lived with the Schmidts—Mr. and Mrs. Schmidt—and the rest of the time we lived over the Mt. McKinley Ice Cream Company.

(Testimony of Sylvia Henderson.)

Q. Did you have an apartment over the Mt. McKinley Ice Cream Company? A. Yes.

Q. Was that a furnished apartment, Sylvia?

A. Well, yes, it was partly furnished.

Q. What did you have in that apartment in the line of a cooking unit? What did you use to cook on?

A. Well, we had a little electric plate—a two-burner electric plate.

Q. Did you ever have a large electric range, such as this one, in your apartment over there?

A. No, sir.

Q. Did you have a refrigerator in your apartment? A. No.

Q. At any time while you was living there, did you have one? A. No, not in the apartment.

Q. Do you know whether or not your mother or Mr. Cutting ever bought a frigidaire and electric range? A. Yes, they did.

Q. Do you know when, about when, that was, Sylvia?

A. Oh, it was about the first of September. I don't remember the exact date. [263]

Q. How do you place that about that time, Sylvia?

A. Because I remember it was before school started.

Q. In what year was that? A. 1945.

Q. And would you just tell the jury in your own words the circumstances of buying the electric range and frigidaire?

(Testimony of Sylvia Henderson.)

A. You mean how they bought it? You mean who they bought it from?

Mr. Arend: We object to that question, unless a foundation is laid to show that she was there when the purchase was made.

The Court: Objection sustained.

Q. (By Mr. Taylor): Were you present at the time that the electric range and refrigerator were purchased? A. Yes.

Q. And where did that take place?

A. Well, they looked at a range and refrigerator out in front of the Mt. McKinley, but the actual signing of the paper took place inside.

Q. Who were these things purchased from?

A. They were purchased from a man, I don't know what his name was.

Q. Did you afterwards learn what his name was?

A. Yes.

Q. What was it? [264]

A. Mr. O'Neil.

Q. And had you ever seen Mr. O'Neil prior to that time, about the first of September?

A. Yes, I had seen him before.

Q. How long before was it?

A. Oh, I don't really remember. He used to come in and buy ice cream quite often.

Q. About how old a man do you think he would be?

A. Well, he seemed kind of middle-aged. I would say about forty or so.

(Testimony of Sylvia Henderson.)

Q. And what was—how big a man was he?

A. Well, he wasn't too tall. He was about medium height.

Q. Did he have any distinguishing characteristics or marks?

A. No, there wasn't anything about his features or anything that I particularly remembered.

Q. How was he dressed?

A. He was dressed, usually dressed in work clothes—overalls.

Q. Do you remember the color of his hair?

A. I think it was kind of brown, if I remember correctly. He was starting to gray along the temples.

Q. Do you remember what time of day it was that he came there?

A. You mean when they bought——

Q. At the time this sale was made.

A. Well, it was sometime late in the evening. I would say between eight and nine o'clock. I don't remember exactly. [265]

Q. When did you first see him that evening, Sylvia?

A. It was when he came in and said he had the range and refrigerator.

Q. And who all was there at the time?

A. There was mother, Mr. Cutting, and myself.

Q. And what was said or done about these things by this Mr. O'Neil and Mr. Cutting and your mother?

A. Well, Mr. O'Neil came in and said he had the range and refrigerator and some other furniture out on his truck, and we went out to look at it.

(Testimony of Sylvia Henderson.)

Q. Did you go out, Sylvia, to look at it?

A. I didn't go out immediately, but afterwards; I went out in a few minutes.

Q. What kind of a truck was it?

A. It was a big truck. I don't recall what make. It was red.

Q. What was on the truck?

A. There was quite a bit of furniture.

Q. Just what did that furniture consist of?

A. Well, there was a range, a refrigerator, a washing machine, and there was some beds, and I think there was a daveno.

Q. Did you look at these things on the truck, Sylvia?

A. Well, I wasn't really interested in the range and refrigerator or washing machine, but he had some dishes and stuff that I was more interested in, so I paid most of my attention to them. [266]

Q. When did you first see the dishes?

A. Well, he said he had some dishes, and I went to see what they looked like, so I got on the truck and looked at them.

Q. You got on the truck? A. Yes.

Q. How long did you remain on the truck?

A. How long was I——

Q. How long did you stay on the truck?

A. I don't really remember. It wasn't very long.

Q. Then where did you go?

A. We went—I went back into the ice cream company.

Q. Into the office in the front? A. Yes.

(Testimony of Sylvia Henderson.)

Q. And do you know how much Mr. Cutting paid for those—or, do you know what he bought, Mr. Cutting bought?

A. Well, he bought the range, the refrigerator, and the washing machine, and these dishes and pots and pans.

Q. How much was paid for those, Sylvia?

A. Well, I heard since it was \$300.00. I knew he paid something, but I don't remember from then.

Q. Do you know how that was paid?

A. It was paid in cash, in bills.

Q. And who gave Mr. O'Neil the cash?

A. Mr. Cutting.

Q. Did Mr. Cutting give it all to him? [267]

A. Well, he didn't have it all. He had some of the money, and then he had to borrow some more from my mother.

Q. Do you know how much he borrowed from your mother? A. No, I don't.

Q. Could you state whether or not that Mr. O'Neil gave Mr. Cutting a bill of sale for it?

A. Yes, he did.

Q. Who prepared this bill of sale?

A. My mother typed it.

Q. And did you see Mr. O'Neil sign the bill of sale? A. Yes.

Q. And what did he sign it with?

A. Well, there was a pen and pencil desk set, and I don't remember which one he used.

(Testimony of Sylvia Henderson.)

Q. And did you ever see Mr. O'Neil after that evening? A. No.

Q. Did he make any remarks at the time this sale was taking place as to what he was going to do, where he was going?

A. He said something about going to Anchorage.

Q. Have you ever seen him in Anchorage?

A. No.

Q. Now Sylvia, that stuff that was purchased by Mr. Cutting, what was done with that? Was that unloaded there?

A. Well, the refrigerator was unloaded there in the back part of the ice cream company, and the washing machine and range was [268] taken and stored with the Schmidts.

Q. What kind of a range was that, Sylvia?

A. You mean the——

Q. (Interposing): The range that was purchased that night, what did it look like?

A. Well, it was kind of an old-looking range. It was kind of raised on one side, and it was quite high off the floor of the truck, and it had quite high legs.

Q. I didn't quite catch your answer as to its being raised on one side.

A. The oven was on the top of the stove. It wasn't flat as most of the ranges are.

Q. Just talk slow, Sylvia, so the jury can hear and the court reporter. I didn't get that answer this last time.

A. The oven, instead of being down inside the stove, it was up, raised.

(Testimony of Sylvia Henderson.)

Q. Would you turn around and take a look at that stove over there and state whether or not that was the range that was bought that evening?

A. No, that isn't the range.

Q. Now, you stated that this range that you bought was taken down and put some place else?

A. At Mrs. Schmidt's home where she lived.

Q. And did you go down there at the time they put it there? A. No. [269]

Q. Did you see that range down there later, Sylvia? A. Yes.

Q. How much later?

A. Well, I remember seeing Mrs. Schmidt quite frequently. It was on one of the visits a short time after that that I saw it.

Q. Where was the range at the time you seen it down there?

A. Why, it was in the storage room on the ground floor.

Q. What kind of a room?

A. Well, it was—they stored stuff in there.

Q. And you saw this range in this storage room?

A. Yes.

Q. Is that in the same building that the Veterans of Foreign Wars were occupying at that time?

A. Yes. They had the front half of the building. They stored stuff down there, and Mr. Cutting had a lot of his things, trunks and suitcases, stored down there.

Q. Did you go into that storage room at the time you went down there?

(Testimony of Sylvia Henderson.)

A. No, I didn't. I just happened to be going by, and the door was open, and I happened to glance in and saw it there.

Q. And the range was stored down there, was that the same in appearance as the one that Mr. Cutting had bought from Mr. O'Neil?

A. Yes.

Q. Now, how long after was it before you went to Anchorage, Sylvia? [270]

A. We went to Anchorage in November?

Q. And you have been living in Anchorage since?

A. Yes.

Q. Where did you reside after you moved to Anchorage, Sylvia?

A. When we first went there, we lived in the Anchorage Hotel, and then my mother and Mr. Cutting bought a house.

Q. Where was that house located?

A. The address was 733 Fifth Avenue.

Q. And that is near the N. C. Company?

A. Yes, it was right behind the N. C. Company. It is next to their apartments.

Q. Calling your attention to some time in December, was you in that house when Mr. Norton and Mr. Baskin came in the home? A. Yes.

Q. About what time did they get there, Sylvia?

A. Oh, I know it was sometime late in the evening. I would say about eight o'clock—something like that.

Q. And what was their purpose in coming there? Do you know why they came there?

(Testimony of Sylvia Henderson.)

A. Well, I didn't find out until afterwards. I overheard—from a conversation, I gathered they were looking for some stolen range and refrigerator.

Mr. Taylor: Should we recess now?

The Court: Yes. We are going to recess in a few minutes. Remember the general admonitions of the Court, ladies [271] and gentlemen of the jury. Do not talk about the case and do not permit anyone to talk to you about it or about it in your presence until the case is finally submitted to you.

(Court was at recess until two o'clock p.m., November 14, 1946, at which time it was duly reconvened. All members of the jury were present.)

The Court: Are counsel ready to proceed with the trial of this case?

Mr. Arend: Yes, your Honor.

Mr. Taylor: Yes, your Honor.

(Sylvia Henderson was recalled to the witness stand.)

Mr. Taylor. You may take the witness, Mr. Arend.

Cross-Examination

By Mr. Arend:

Q. How long have you lived in Fairbanks, Sylvia? A. About a year.

Q. About a year. Will you describe to the jury the electric range that your family bought from Mr. O'Neil?

(Testimony of Sylvia Henderson.)

A. Well, it was an old-time range. It had an up-raised oven. It wasn't flat on the top, and it had four legs. It was up, oh—it was quite high—it was rather high.

Q. What make was it?

A. I think it was Westinghouse.

Q. You think it was? [272]

A. I am not positive.

Q. Are you positive that Mr. O'Neil was turning gray around the temples?

A. I am quite sure.

Q. You are quite sure of that. By what names have you known Mr. Cutting?

A. Just as Mr. Cutting.

Q. What first name?

A. Well, it is Percival, but they call him "Sandy."

Q. Have you also known him as Percy J. Cutting?

A. Yes.

Q. As Percy James Cutting?

A. Yes.

Q. Have you ever known him as P. J. Cutting?

A. Yes.

Q. To your knowledge has he ever lived in California?

A. Yes.

Q. Was he living there in 1939?

A. I don't know.

Q. You don't know when he was living there?

A. Well, I don't know the exact years. I just know that he has resided in California.

Q. Did he come from California to Alaska?

A. I don't know that either.

(Testimony of Sylvia Henderson.)

Q. Oh, you don't know that. Has he resided in any other state [273] than California?

A. Well, the only one that I know is Vermont.

Q. Vermont. That is where he was born?

A. Yes.

Q. Do you know how long it is since he has resided in Vermont?

A. No. I imagine it is quite awhile.

Q. Do you know how long he has been in Alaska?

A. I think it is about five years.

Q. About five years. Did he ever live in Oakland, California, to your knowledge?

A. Well, I don't know. I heard him mention it quite a bit, but I don't know if he ever lived there.

Q. Now, Sylvia, it is perfectly all right for a witness to discuss a case like this with anyone except the members of the jury. With that in mind, have you discussed this case with anyone?

A. With the lawyers.

Q. Have you discussed it with your mother?

A. Yes.

Q. You know that your mother was on the witness stand this morning, do you? A. Yes.

Q. After she took the witness stand and there was a recess and she came outside, did you discuss the case with her then?

A. Yes. She said something to me. I really don't remember what [274] she said. I don't believe it was about the case, though.

Q. Did you talk to her about Mr. O'Neil?

A. No.

(Testimony of Sylvia Henderson.)

Q. Have you ever talked to her about him?

A. She just asked me if I remembered what he looked like.

Q. When did she ask you that?

A. It was a couple of weeks ago, when I first knew I was going to be a witness.

Q. Did she tell you what she remembered that he looked like? A. No. She just asked me.

Mr. Arend: No further questions.

Mr. Taylor: That is all, Sylvia.

(Witness excused.) [275]

CARL L. BLAKESLEY

called as a witness on behalf of the defendant, having been first duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Taylor:

Q. Will you state your name, please?

A. Carl L. Blakesley.

Q. Where do you reside, Mr. Blakesley?

A. In Anchorage.

Q. How long have you lived there?

A. Just about two weeks.

Q. Prior to then, where did you live?

A. At Hope, Alaska.

Q. Have you ever lived in Fairbanks?

A. Yes, sir.

Q. What is your occupation, Mr. Blakesley?

A. Warehouseman.

(Testimony of Carl L. Blakesley.)

Q. Did you ever have a job or position such as that here at Ladd Field? A. Yes, sir.

Q. Or Satellite Field? A. Yes, sir.

Q. At both of them? A. Yes, sir. [276]

Q. Just what did your duties consist of, Mr. Blakesley?

A. At Ladd Field I was superintendent of warehousing there for the Engineers.

Q. And did your duties have anything to do with the keeping of the records?

A. At one time, they did, yes, sir.

Q. About what time was that?

A. Up to the time the Resident Engineers and the Post Engineers consolidated.

Q. And do you remember approximately when that occurred?

A. About the—around about the first of December, 1944.

Q. And then did that arrangement stay in effect for the rest of the time you worked out there?

A. Yes, sir.

Q. Mr. Blakesley, did you retain the same position? Did you have the same position, though, after that?

A. Yes, sir. That is when I was made superintendent there at that time.

Q. Now, at the time that you was out there, did you have either the stoves, the ranges and the refrigerators in your records, inventory records?

A. Yes, sir.

(Testimony of Carl L. Blakesley.)

Q. And were they turned over to the Post Engineers office later? A. Yes, sir.

Q. What was the condition of those records at the time that you [277] turned them over, Mr. Blakesley?

A. Well, they—at the time they were turned over to the administrative offices of the Post Engineers, they were all accounted for and in good shape.

Q. Now, were the refrigerators and ranges out there, were they property of the United States?

A. Yes, sir.

Q. They were on the list of stuff that was supposed to be accounted for? A. Yes, sir.

Q. Do you remember of any stoves or ranges or refrigerators that was charged out to Satellite Field?

A. I know of one stove and one refrigerator that I personally remember of.

Q. Can you state whether or not that that was ever returned to Ladd Field or not?

A. So far as I know——

Mr. Arend (Interposing): We object to that, your Honor. He has said there are records, and the records would be the best evidence.

Mr. Taylor: I asked him if to his knowledge they had been returned.

The Court: The objection will be sustained.

Q. (By Mr. Taylor): Now, in putting out these stoves, ranges and stuff, were any of those allocated to individuals such as [278] officers or civilian workers at the base?

(Testimony of Carl L. Blakesley.)

A. They were to the officers.

Q. How was that record kept?

A. It would be on a memorandum receipt.

Q. And when the officers would leave or be transferred, would they return the ranges or refrigerators?

A. They would have to call at my office for them to be returned, and then we would go over and get it, or else order some other officer to take it over. The officer who had it would get a credit for it, and we would assign it over to the new officer, or else the property would be returned to the warehouse.

Q. Now, were you in charge of the warehouses out there at the time that Satellite Field was closed? A. Yes, sir.

Q. And did you receive the equipment and material that was returned from Satellite Field to Ladd Field? A. I did.

Q. And what was done with that material as it came back in, Mr. Blakesley?

A. The trucks generally came up to my main warehouse there where my office was, and I would assign it. I would look the trucks over and see what the material was and assign it to the different warehouses.

Q. And do you know whether or not a record was made of that stuff as it came back in? [279]

A. The material was sent up there, and most of it had a tally-out with it to describe the item that was on the truck, and we put it in our stock there and absorbed it.

(Testimony of Carl L. Blakesley.)

Q. Do you know whether all of the material which had been brought in from Satellite Field was handled that way? A. No, it was not.

Q. How was some of it handled?

A. For the reason that there was a lot of trucks coming up in there, and the men would load the material on the trucks and bring it into Ladd Field without coming in to tell me about it, and they would dump it over in the stock pile somewhere.

Q. And those things there would not be any record of them coming back?

A. No, there wouldn't.

Q. Was there ever any investigation of material that was supposed to have been trucked back to Ladd Field, or, from Satellite Field to Ladd Field, which Mr. Cutting was accountable for? A. Yes, sir.

Q. What was that material?

A. Well, one was a lot of electrical material which at the time the investigator came up there, why, we proved that everything was on the post.

Q. Calling your attention to a certain boiler, was there an investigation made about that? [280]

A. Yes, sir. There was a big steam boiler—I don't know what the estimated weight was, but it was probably about twelve or fifteen feet long; it would take a lowboy to haul it and a crane to load it onto the lowboy—and that was supposed to be missing. There had been none brought on Ladd Field there, and, after we got to hunting around for it, it was found sitting out on the field there, and it was identified as the one missing. That was brought in there without my knowledge.

(Testimony of Carl L. Blakesley.)

Q. That had been brought in there and placed in there without any report on it? A. Yes, sir.

Q. I believe you stated that other equipment and material had also been returned the same way?

A. Yes, sir.

Q. Now, was there any articles, items of various sorts, that would be taken out of the warehouse by officers, or enlisted men, or civilians, without your knowledge? A. It had been done, yes.

Q. Do you know of cases of it being done?

A. I had several warehouses broken into and material gone quite a few times.

Q. And did you find out where it had gone to later? A. No, I didn't.

Q. And do you know where it had gone to, who had taken it? A. Only in one case. [281]

Mr. Arend: We object to that, your Honor, unless it is connected with the defendant.

The Court: Objection sustained.

Q. (By Mr. Taylor): Mr. Blakesley, was there material and equipment that didn't show on the inventory? Was there anything out there that didn't show on the inventory?

Mr. Arend: We object to that unless he makes certain which inventory is meant.

Q. The warehouse inventory.

A. There was lots of items.

Mr. Arend: We object to that as too indefinite.

The Court: It is too indefinite, Mr. Taylor.

Q. It is particularly directed to various items which you kept in the warehouses and which was under your control.

(Testimony of Carl L. Blakesley.)

Mr. Arend: We still object to it, your Honor. There is nothing definite there.

The Court: Objection sustained.

Q. (By Mr. Taylor): Now, do you remember how many stoves and ranges, electric ranges and refrigerators were checked out to Satellite Field?

Mr. Arend: We object to that unless he identifies the type of range first.

The Court: The objection will be overruled.

Mr. Taylor: They brought this up.

The Court: The objection was overruled. [282] Do you remember the question? Answer it "yes" or "no." A. Yes, sir.

Q. How many was there?

Mr. Arend: We object to it, your Honor, unless he shows what kind of ranges.

The Court: I believe he said electric ranges.

Mr. Arend: I think it should be further identified as to the make: whether it was General Electric or Westinghouse.

Mr. Taylor: If the Court please, the government brought this same question up, and they had ranges go out there without any identification marks on them, any numbers. I think we are entitled to show how many were brought out so far as Mr. Blakesley's knowledge is concerned.

The Court: Limit it as to them.

Q. (By Mr. Taylor): During the time that Satellite Field was activated.

A. There was one electric refrigerator and one electric stove of the household type.

(Testimony of Carl L. Blakesley.)

Q. Can you state, to your own knowledge, whether or not that electric range and electric refrigerator, which was charged out to Satellite Field, was returned to Ladd Field? A. It was not.

Q. Your records would indicate that it wasn't returned; is that right? A. Yes, sir. [283]

Q. Where are you working now, Mr. Blakesley?

A. For the Birch, Johnson, and Lytle Company in Anchorage.

Q. What is your occupation there?

A. I am working in the warehouse.

Q. Warehouseman. You are acquainted with Mr. Cutting, are you not, Mr. Blakesley? A. Yes.

Q. How long have you known him?

A. Probably over two years.

Q. And was that acquaintance here at Ladd Field and Satellite Field while you were working here? A. Yes, sir.

Q. And what was his occupation or position at that time?

A. He was post engineer at Satellite Field.

Mr. Taylor: I believe that is all, Mr. Blakesley. You may cross-examine.

Cross-Examination

By Mr. Arend:

Q. Are you familiar with the tally-out sheets that were used at Satellite Field? A. Yes, sir.

Q. That is, that would be used in bringing back property to Ladd Field. A. Yes, sir.

(Testimony of Carl L. Blakesley.)

Q. Are you acquainted with Mr. P. J. Cutting's signature, the defendant's signature?

A. I think so.

Q. I show you Plaintiff's Identification No. 13 and ask you to look at it. It is Plaintiff's Exhibit H. Do you find two ranges listed on there, two electric ranges?

A. No, sir. That is two ranges. The electric is crossed out.

Q. Don't you find that that is merely the line from the reverse side of that paper?

A. It could be, yes, holding it up that way.

Q. Now, appearing on the tally-out sheet signed by Mr. Cutting, is that his signature on there?

A. I wouldn't positively identify it, no, because I haven't seen his writing.

Q. Well, assuming that it is his signature and that it is a tally-out sheet from Satellite Field, do the items listed on there represent government property? Or are they personal property?

Mr. Taylor: If the Court please, I object to the question upon the ground that it calls for a conclusion of the witness.

Mr. Arend: It is cross-examination, your Honor.

The Court: Objection sustained.

Q. (By Mr. Arend): Now, I show you Plaintiff's Exhibit A and ask you to look at it. Is that a type of memorandum receipt that you took for government property issued to military personnel?

A. That is an old type, yes, sir.

(Testimony of Carl L. Blakesley.)

Q. Mr. Blakesley, can you tell the jury the serial number that was on the one range that was at Satellite Field during the time——

A. (Interposing): I can't tell the jury that.

Q. Oh, you can't tell the serial number?

A. There are too many numbers involved there to remember that many.

Q. Can you tell the jury whether or not a Westinghouse electric range, type TH64, serial number 830175, frame style number 1086298, was ever on Satellite Field?

A. Not that particular one, no.

Q. That particular one was never on Satellite Field. How do you know?

A. I said that I couldn't say that.

Q. Oh, you couldn't say that? A. Yes.

Redirect Examination

By Mr. Taylor:

Q. Mr. Blakesley, Mr. Arend has shown you a certain exhibit here that, I think, you identified as a tally-out of Satellite Field. Now, in the ordinary course of procedure, what would be done with that? Who would first get that tally-out sheet at Satellite Field? [286]

A. If the item was going from Ladd Field to Satellite Field, the tally-out was made in my office. There was three copies made of that: one kept in our office and two went to the truck-driver, and as the truck-driver went out the gate, the M.P. picked up the one copy of that, and the other copy went to Satellite Field.

(Testimony of Carl L. Blakesley.)

Q. And, in reverse, if the truck went out of Satellite Field, three copies would be made out; one would be retained——

Mr. Arend (Interposing): We object to counsel giving the evidence. I think the witness should testify.

Q. Just state what was done.

A. That would be the same from Satellite Field to Ladd Field.

Q. And the truck driver would have two copies?

A. Yes, sir.

Q. One to give the M.P.? A. Yes, sir.

Q. And one to bring to Ladd Field when he arrived there? A. Yes, sir.

Q. And in whose possession would that be in from the time he left the gate?

A. Which copy, sir?

Q. The copy that was going to Ladd Field.

Q. Well, the copy that was going to Ladd Field would be turned in with the supplies that he had on the truck.

Q. You mean to say the truck-driver would have that? A. Yes, sir. [287]

Mr. Taylor: I believe that is all, Mr. Blakesley.

Recross-Examination

By Mr. Arend:

Q. Who would get the original of those three copies?

A. The original was kept in my office.

(Testimony of Carl L. Blakesley.)

Q. No, I mean coming from Satellite Field, who would get the original? A. The M.P.

Q. The M.P.?

A. Yes, sir, the M.P. As the truck went through the gate, the M.P. would get the first copy.

Mr. Arend: I have no more questions.

Further Redirect Examination

By Mr. Taylor:

Q. Mr. Blakesley, do you know in what building at Satellite Field that the range, electric range and the electric refrigerator were in?

A. The electric refrigerator and electric range I sent down from Ladd Field to Satellite Field went to the dispensary.

Q. Mr. Blakesley, could you state whether or not, at the time that Mr. Cutting was terminated at Satellite Field, that his property list was cleared?

A. It was. [288]

Q. And it showed that he had no property of the government? A. Yes, sir.

Mr. Taylor. That is all, Mr. Blakesley.

Mr. Arend: That is all.

(Witness excused.) [289]

GEORGE NEHRBAS

called as a witness on behalf of the defendant, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Taylor:

Q. Will you state your name, please?

A. George Nehrbas.

Q. Where do you reside, Mr. Nehrbas?

A. Fairbanks.

Q. And what business or occupation do you follow?

A. I have the Fairbanks U-Drive.

Q. How long have you been in that business, Mr. Nehrbas?

A. Since 1939.

Q. And what type of business is that?

A. Renting of automobiles.

Q. Of various sorts?

A. Yes.

Q. Trucks, sedans, and so forth. I suppose over the years you have rented quite a number of cars, Mr. Nehrbas?

A. Yes.

Q. And had a great many customers. Mr. Nehrbas, do you ever remember of renting a car to a man named M. W. O'Neil?

A. I don't remember the man.

Q. Now, in renting a car, do you have any record of the rental of that car?

A. Yes. [290]

(Testimony of George Nehrbas.)

Q. How is that record kept, Mr. Nehrbas?

A. We have a rental contract book that the customer, the renter, signs. We make it out and he signs it. It is a contract agreement. We keep one copy in the book; he gets the other copy.

Q. Which copy do you keep, Mr. Nehrbas?

A. In the older books, we keep the carbon copy. In the newer books, the later books, we keep the original copy.

Q. Is that a permanent record, then, of the transactions you have in——

A. Yes.

Q. ——regard to the rental of cars?

A. Yes.

Q. Who kept those books?

A. I kept those books.

Q. Now, Mr. Nehrbas, would you take a look at this book and state what that is?

A. That is one of older type rental books, which we had in effect from 1941 until 1945.

Mr. Taylor: I would like to have that marked for identification.

(Rental contract book of the Fairbanks U-Drive was marked by the clerk of the court as Defendant's Identification C, and the page hereinafter referred to is in words and figures as follows:) [291]

(Testimony of George Nehrbas.)

“Rates for Fairbanks-U-Drive

“East 329

411 Second

\$20.00 Deposit Required

(Forfeitable on Breach of This Contract)

Short Rental Rates		Daily Rental Rates	
Includes Gas and Oil		Customer Furnishes Own Gas and Oil	
“Older Cars,	} Minimum	.07½ per	} 100 mile
.15 per mile		mile	
	4 miles		per 24-hr.
Good Cars,	} per hour	.10 per	} day
.20 per mile		mile	

Service Charges, \$0.75 minimum. \$1.50 per 24-hr. day

Date, July 5 Name..... Address.....

“Make of Car, 25 Ford	Model of Car, Brown
Time In.....	Mileage In 53
Time Out.....	Mileage Out 65518
Time Used.....	Mileage Driven 35
Rate at.....	5
	<hr/>
	110
	2
	<hr/>
Amount of Rental.....	8.00
Damages	
Service Charges, 5 mi. on 35	3.00
Misc. Charges	
	<hr/>
Total	\$11.00

Pd

“The undersigned lessee agrees, guarantees and warrants as follows: [292]

(Testimony of George Nehrbas.)

“1. That lessee has examined said automobile and that it is in good and serviceable condition, and that he will hold lessor harmless from all claims arising out of latent defects therein. That immediately upon driving the car, if there is no objection to the condition of the car, it will be presumed by the lessor that the car is entirely satisfactory to lessee.

“2. That lessee will return the automobile in the same condition as when received and will pay for any damage done to said automobile while in his possession. The lessee further agrees to hold and save the lessor harmless and free from all claims arising out of injuries to persons or damages to property caused by the lessee during the time lessee has said automobile out of lessor's possession.

“3. That lessee will retain sole and exclusive possession of car and allow no one else to operate it and will observe and obey all Federal, Territorial and Municipal laws while said automobile is in his possession. That said automobile will not be used to carry passengers or goods for hire.

“4. The lessee agrees not to change or alter any part of the automobile rented, or any accessory, instrument or part attached thereto, in any way whatsoever, except for necessary repairs while en route, and at lessee's own expense.

(Testimony of George Nehrbas.)

“5. That lessee is responsible for all towing and wrecking fees except when due to defects in mechanism. [293]

“6. That I am 21 years of age, and am a capable, competent driver and will not at any time operate this vehicle while under the influence or effect of liquor.

“7. That the undersigned has read and received a copy of this contract.

“Lessor:

Fairbanks-U-Drive	/s/ “M. W. O’Neil
By.....”	“(Lessee)”

Q. (By Mr. Taylor): Now, Mr. Nehrbas, will you open that book at the place where the little marker is and state what that is?

A. That was a car that was rented to M. W. O’Neil on July 5. It was a ’35 Ford Sedan. It was a——

The Court: What year?

A. The rental——

The Court: What year?

The Witness: Was it rented?

The Court: Yes.

The Witness: 1941.

Q. (By Mr. Taylor): Was that signed by Mr. O’Neil? A. Yes. It is made out by myself.

(Testimony of George Nehrbas.)

Mr. Taylor: We would like to offer this in evidence.

Mr. Arend: We would like to know for what purpose it is being offered.

Mr. Taylor: It is offered for the purpose of confirming [294] the handwriting on the slips with the handwriting on the bill of sale given.

Mr. Arend: As I see it, your Honor, there is no identity established between this M. W. O'Neil and the signature that we have on one of the papers here in this case, the bill of sale, and I believe it is a little too remote for any purpose. They probably have something more recent.

The Court: Objection overruled.

Q. (By Mr. Taylor): Would you please state what that is, Mr. Nehrbas?

A. This is another car that was rented to the same M. W. O'Neil on September 23 the same year; that is a '41 Ford.

Q. Is that signed by Mr. O'Neil?

A. Yes, sir, the same signature.

Mr. Taylor: I would like to have that marked for identification.

(Thereupon a rental contract book of the Fairbanks-U-Drive was marked by the clerk of the court as Defendant's Identification C, and the page referred to in this proceeding is, in words and figures, as follows:)

(Testimony of George Nehrbas.)

“RATES FOR FAIRBANKS-U-DRIVE

“East 329

411 Second

\$20.00 Deposit Required

(Forfeitable on Breach of This Contract)

Cash

“Short Rental Rates	Daily Rental Rates
Includes Gas and Oil	Customer Furnished
	Own Gas and Oil

“Older Cars,	} Minimum	.07½ per	} 100 mile
.15 per mile		mile	
Good Cars,	} 4 miles	.10 per	} per 24-hr.
	per hour		

Service Charges, \$0.75 minimum \$1.50 per 24-hr. day

Date, Sept. 23. Name..... Address.....

“Make of Car, 41 Ford	Model of Car, Coupe	
Time In.....	Mileage In	84
Time Out.....	Mileage Out	6278
Time Used.....		<hr/>
Rate at..... Pd	Mileage Driven	6
Amount of Rental.....2.50		
Damages.....		
Service Charges.....		
Misc. Charges.....		
Total.....		

“The undersigned lessee agrees, guarantees and warrants as follows:

“1. That lessee has examined said automobile and that it is in good and serviceable condition, and that he will hold lessor harmless from all claims

(Testimony of George Nehrbas.)

arising out of latent defects therein. That immediately upon driving the car, if there is no objection to the condition of the car, it will be presumed by the lessor that the car is entirely satisfactory to lessee.

"2. That lessee will return the automobile in the same condition as when received and will pay for any damage done to said automobile while in his possession. The lessee further agrees to hold and save the lessor harmless and free from all claims arising out of injuries to persons or damages to property caused by the lessee during the time lessee has said automobile out of lessor's possession.

"3. That lessee will retain sole and exclusive possession of car and allow no one else to operate it and will observe and obey all Federal, Territorial and Municipal laws while said automobile is in his possession. That said automobile will not be used to carry passengers or goods for hire.

"4. The lessee agrees not to change or alter any part of the automobile rented, or any accessory, instrument or part attached thereto, in any way whatsoever, except for necessary repairs while en route, and at lessee's own expense.

"5. That lessee is responsible for all towing and wrecking fees except when due to defects in mechanism.

"6. That I am 21 years of age, and am a capable, competent driver and will not at any time operate this vehicle while under the influence or effect of liquor.

(Testimony of George Nehrbas.)

“7. That the undersigned has read and received a copy of this contract. [297]

“Lessor:

Fairbanks-U-Drive /s/ “M. W. O’Neil
By” “(Lessee)”

Q. (By Mr. Taylor): Now, referring to this, can you state the date that that rental was made?

A. That was on July 5.

Q. And what type of car was it?

A. ’35 Ford Sedan.

Q. And that was signed by Mr. O’Neil, was it?

A. Yes.

Q. And then calling your attention to the slip that is marked in that, could you state what that is—date, that is. A. September 23.

The Court: Of what year?

The Witness: ’41. ’41 Ford Coupe at the same rental.

Mr. Taylor: I believe that is all now, Mr. Nehrbas.

Cross-Examination

By Mr. Arend:

Q. Mr. Nehrbas, can you describe Mr. O’Neil to us?

A. I cannot. I don’t remember him.

Q. You don’t remember him? A. No.

Q. You haven’t seen him since 1941?

A. I wouldn’t know him if I saw him. [298]

Q. Did he sign them in your presence?

(Testimony of George Nehrbas.)

A. Whoever signed the name O'Neil signed them in my presence, but I don't remember O'Neil. It is too long ago. I never knew him personally.

Q. Did he ever get a car since September, 1941?

A. That also I would be unable to say, but I rather doubt it.

Q. Did you go through your records?

A. I didn't go through them all. I believe another party did.

Mr. Arend: That is all.

(Witness excused.) [299]

HARRY O. AREND

called as a witness on behalf of the defendant, having been previously sworn, was further examined and testified as follows:

Direct Examination

By Mr. McCutcheon:

Q. Mr. Arend, in your experience as United States Attorney, you have undoubtedly had occasion many times to compare signatures. You have had some experience in that, have you?

A. I am no signature expert. I usually go to someone else to get comparisons made for me.

Q. I hand you that bill of sale, Defendant's Exhibit No. 1. Will you compare the signatures on the bill of sale with the carbon copy of the record?

A. Yes.

Q. Would you say that that is the same signature?
A. I couldn't say.

(Testimony of Harry O. Arend.)

Q. Does it look like the same signature? Take all the time you want. I am not trying to hurry you.

A. Well, the "N" in O'Neil in—on these two identifications—in one of them it appears to have been printed; in the other it appears to have been written in a flowing hand.

Q. Would you say—

A. Wait a minute. I am not through yet.

Q. Go ahead. [300]

A. On the bill of sale it appears that the man made an "M" for the "N"; in other words, there are three distinct strokes on the "M" which should have ordinarily been an "N," as it is O'Neil. There are some similarities, however, and there are also differences. The "O" is entirely different on the bill of sale.

Q. Is it entirely different? Did you say "entirely different"?

A. Yes, I will say that, because the "O" on the identifications is made in the form of a circle, with the last part of the up stroke ending inside of the beginning down stroke, but fairly close to it. On the bill of sale, the "O" commences in the center of the circle, goes up and around, and comes back into the center of the circle again, which gives a loop in the middle of the "O." Now, that is a distinction to me.

Q. Would you say that the signatures look similar?

A. I wouldn't say so.

Q. You would say they didn't look similar?

A. To me they do not.

(Testimony of Harry O. Arend.)

Mr. McCutcheon: Very well. That is all, unless there is some cross-examination.

The Witness: I realize that there is about five years difference—four years, at any rate.

Mr. Berrett: No cross-examination.

(Witness excused.) [301]

STANLEY D. BASKIN

called as a witness on behalf of the defendant, having been previously sworn, was further examined and testified as follows:

Direct Examination

By Mr. Taylor:

Q. Now Mr. Baskin, I suppose in your training as an F.B.I. man that you have studied handwritings to a certain extent?

A. Well, I never received any special instruction on it.

Q. I suppose that there are many times that you have been called upon to compare handwritings for similarities and general appearances?

A. Yes, I have been called on, but just to express my personal opinion.

Q. Mr. Baskin, I hand you Defendant's Exhibit No. 1 and also Defendant's Identification C and ask you to compare the signature of William N. O'Neil appearing on there with the signature of William W. O'Neil, or, M. W. O'Neil, appearing on the bill of sale, and state whether, in your opin-

(Testimony of Stanley D. Baskin.)

ion, there is a similarity between those signatures. It may be you want a little better light. If you do, you may get under another light.

A. No, this is all right. Yes, there are features of those letters that are similar.

Q. Now, compare the bill of sale with Defendant's Identification [302] B that bear the signature of M. W. O'Neil appearing there with M. W. O'Neil which appears on Defendant's Exhibit 1.

A. There are certain features of it that are similar, but the O'Neil in this Exhibit 3—

Q. That is Identification B, I believe it is.

A. —is spelled with an apostrophe—O'Neil—and the others are not spelled with an apostrophe. The "W" is considerably different from the "W" in Identification No. 1—is that it?

Q. Yes.

The Court: I believe it is Exhibit 1.

Q. How about the general appearance, though, of that signature, Mr. Baskin?

A. The general appearance is similar.

Q. And in your opinion they might have been written by the same hand?

A. They could have been written by the same hand.

Mr. Taylor: If the Court please, at this time I would like to offer the two exhibits B and C as exhibits in this case.

Mr. Arend: We object to their admission.

The Court: Objection overruled. They may be admitted.

(Testimony of Stanley D. Baskin.)

(Thereupon Defendant's Identifications B and C were marked by the clerk of the court as Defendant's Exhibits No. 2 and 3, respectively.)

Mr. Taylor: That is all, Mr. Baskin. [303]

Cross-Examination

By Mr. Arend:

Q. I want you to examine again Defendant's Exhibit No. 1 and what has been marked here on the front "Identification C," now Exhibit 3, in regard to this one question I think that was asked you by counsel as to whether there were any similarities. Now, I want to ask you about these two signatures, purporting to be those of O'Neil; if you note any dissimilarities, will you state what they are? A. I do.

Q. State what they are in Exhibit 1.

A. In Exhibit 1, the "M" is written very much like a "W" with a loop in the beginning; it comes down to almost the bottom of the "M", and in Exhibit—what is this: "C"?

Q. No. 3.

A. And in No. 3, the loop in the "M" is high at the top of the "M." The "W" in Exhibit 3 is sharp at the bottom and at the center, whereas the "W" in Exhibit 1 is—the "W" is round at the bottom. In Exhibit 3 there is an apostrophe between the "O" and the "N"; in Exhibit 1, there is no apostrophe; and in Exhibit 3 the first "e"

(Testimony of Stanley D. Baskin.)

appears to be dotted; that is, the letter which appears to be "e" appears to be dotted, and in Exhibit 1 what appears to be spelled N-e-i-l, with the "i" being the third letter of it, the dot is over the third letter in the word "Neil." [304]

Q. Compare the letter "O" in the word "O'Neil" in the two documents.

A. There is considerable difference between the "O"; in Exhibit 3 it is particularly round, but in the "O" in Exhibit 1, it is round, but it has a loop in the center.

Q. Do you believe, Mr. Baskin, that these two documents were signed by the same individual?

A. Well, I couldn't say they were signed by the same individual. I would say they could be, but I wouldn't say they were signed by the same individual.

Mr. Arend: That is all.

Mr. Taylor: That is all, Mr. Baskin. I would like to show the jury the comparison of these signatures.

(The above-mentioned exhibits were shown to the jury.)

The Court: We will take a recess for ten minutes.

(A ten minute recess was taken, after which court was duly reconvened. All members of the jury were present.)

The Court: Call your next witness.

Mr. Arend: Defendant rests, your Honor. [305]

EMMA JACQUELINE GRUENEICH

called as a witness on behalf of the plaintiff, having been duly sworn by the clerk of the court, was examined and testified as follows:

Direct Examination

By Mr. Arend:

The Court: I suggest, first, that the jury refrain now from taking up any more time with those exhibits. They will take quite a bit of time, and, when you get to the jury room, you will have time to examine them more carefully.

Q. State your own full name, please.

A. My name is Emma Jacqueline Grueneich.

Q. How long have you lived in Fairbanks, *Mr.* Grueneich?

A. Since July of 1942.

Q. Where were you living on the 1st of October, 1945?

A. We were living in the building formerly known as the Moose Hall.

Q. Did you own the building? A. Yes.

Q. Are you acquainted with Mrs. Percy James Cutting? A. Yes.

Q. Do you know Mr. Percy James Cutting, the defendant here? A. Yes.

Q. Did you have a conversation with Mrs. Cutting in your apartment on October 1st, 1945, relative to an electric range and refrigerator? [306]

A. Yes, I did. I wouldn't say it was on October 1; it was sometime during October. To say the exact date, I am inclined to believe that it was possibly nearer the latter part of October.

(Testimony of Emma Jacqueline Grueneich.)

Q. Is it the only conversation you had with her regarding an electric range or refrigerator?

A. Yes.

Q. What was said in the conversation?

A. Mrs.—she was Mrs. Henderson at the time she came to see me; that was prior to the time that she and Mr.—well, just a minute, now. Am I correct on that? No, I think that was shortly after she and Mr. Cutting were married. She was Mrs. Henderson at the time we bought the building. She was renting the space for the Mt. McKinley Ice Cream Company, and just a few days after we purchased the building she placed her business on sale.

Mr. Taylor: We object to that, your Honor, as not responsive.

The Court: Objection sustained.

Q. Will you just answer the question and just confine yourself to the question?

A. Yes. What was the question?

Mr. Arend: Will you please read the question?

(The question was read by the reporter:

What was said in the conversation?) [307]

A. Mrs. Cutting came to my apartment, and she asked me—during that time we were constructing apartments, and how the subject came up, she asked me if we were having difficulty in getting electric stoves and refrigerators, and I told her that those things were always, at that time, hard to get, but we had been promised some; and she

(Testimony of Emma Jacqueline Grueneich.)
said, "How would you like to buy a Westinghouse stove and refrigerator?" Well, I spoke up, and I said, "Well, what would you want for them?" So she said, "What will you give me for them?" And so I explained to her then that I would have to see the merchandise involved and know something about how long it had been in use and when it was purchased, and so forth, before I could tell her how much I would pay her for it; and the conversation ended there, and it wasn't brought up again. I didn't make any effort to see her, and she didn't come to see me in regards to the matter after that.

Q. Did you ever see the range or refrigerator that you two were talking about?

A. No, I didn't. No.

Mr. Arend: You may cross-examine.

Cross-Examination

By Mr. Taylor:

Q. Just about what time was that? Did you say it was shortly after they were married? [308]

A. I would say it was shortly after they were married, Mr. Taylor. It was sometime after they were married. It was prior to the time that Murton bought the business out she happened to see me. To begin with——

Q. No. I just wanted you to place the time.

A. That is what I am trying to establish, the time. I can't say exactly what time it was.

Q. It was sometime after their marriage, though?

(Testimony of Emma Jacqueline Grueneich.)

A. It was sometime, I would say, between the middle and latter part of October.

Mr. Taylor: I believe that is all, Mrs. Grueneich.

Mr. Arend: That is all.

(Witness excused.) [309]

STANLEY D. BASKIN

called as a witness on behalf of the plaintiff, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. Mr. Baskin, you have testified at this trial that you and Mr. Norton made a search of the Cutting home in Anchorage in December, 1945. Did Mr. Cutting at any time object to your making such a search?

Mr. Taylor: If the Court please, I object upon the ground that the witness never testified that he made a search of the Cutting Home in Anchorage.

The Court: Objection overruled.

Mr. Taylor: And it is improper redirect examination. It is not proper rebuttal.

The Court: Objection overruled.

A. He never made any objection to the search. I asked him if he had any objection to my searching his residence, or home, and he said he didn't. He said, "To satisfy yourself, you may."

Mr. McCutcheon: We object to it as not responsive.

(Testimony of Stanley D. Baskin.)

The Court: Objection sustained.

Q. (By Mr. Arend): Did Mrs. Cutting ever make an objection to your making that search?

A. She never made any objection to searching her home.

Q. In what division of Alaska is Ladd Field situated? [310]

A. It is the Fourth Judicial Division.

Q. And in what Division of Alaska is Satellite Field located, approximately twenty-six miles from the Town of Fairbanks?

A. In the Fourth Judicial Division.

Mr. Arend: You may cross-examine.

Mr. Taylor: No cross-examination.

(Witness excused.) [311]

HUGH C. NORTON

called as a witness on behalf of the plaintiff, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. Mr. Norton, you have testified at this trial that during December, 1945, you and Mr. Baskin made a search of the Cutting home at Anchorage, Alaska. Did Mr. Cutting, at any time, object to your making such a search?

Mr. Taylor: We object to the question. It is just a repetition of a question that was put to the

(Testimony of Hugh C. Norton.)

witness on direct examination. He has already testified to the same matter.

The Court: Objection overruled.

A. No, he did not object.

Q. Did Mrs. Cutting make any such objection?

A. No. She requested me to make the search after Mr. Cutting had said it was all right.

Q. When you were interviewing Mr. and Mrs. Cutting at your office on December 19, 1945, at Anchorage, Alaska, did you there tell her to go home and get a bill of sale? A. No.

Q. Was there any conversation regarding a bill of sale at that interview between you and Mrs. Cutting? A. Yes, sir. [312]

Q. What was that?

A. Well, in questioning her concerning this stove and refrigerator, this stove, Mrs. Cutting said that she had a paper purporting to be a bill of sale, and I asked her if she had it with her, and she said no, she did not; she had it at home, and if I would like she would go home and get it, and I said, "Yes, I would like to see it and see what is on the bill of sale."

Q. You also testified that another F.B.I. agent, Mr. Wright, was present during the interview at your office on the 19th of December, 1945?

A. Yes, sir.

Q. Did he remain there during the entire interview? A. Yes, sir.

Q. Who conducted the interview: You or Mr. Wright?

A. I did. One thing, I think Mr. Wright went out for probably half a minute to get some matches. As I recall, he just stepped out and stepped back.

Mr. Arend: You may cross-examine.

Mr. Taylor: No questions.

Mr. Arend: That is all, Mr. Norton.

(Witness excused.) [313]

ANDREW JACKSON HALL

called as a witness on behalf of the plaintiff, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Arend:

Q. Mr. Hall, did you have a conversation with Mrs. Audrey Henderson Cutting in the Model Cafe, during the noon hour, on the 24th day of December, 1945?

A. I did have a conversation. I don't know exactly—I don't remember exactly that date. I am not sure it was that particular date, but I had lunch with her there and a conversation, yes.

Q. Is that the only time you had lunch with her at the Model?

A. Yes, only once at the Model, I believe.

Q. Who else was present?

A. Oh, there was no one. No one else was present except she and I, I believe at this particular time. I mean, she was the only one with me, and I was the only one with her, yes.

Mr. McCutcheon: We object to any further testimony unless they fix the date, your Honor.

(Testimony of Andrew Jackson Hall.)

The Court: Fix a date.

Q. (By Mr. Arend): Can you fix it with respect to Christmas of '45, 1945?

A. Well, I remember it was on the 23rd, I believe—on the 23rd I believe—just before Christmas, or about two or [314] three days before Christmas I met her at the Nordale Hotel. She called me up when she came in on the plane and asked me to——

Mr. McCutcheon: (Interposing) We object to that as not responsive to any question, your Honor.

Q. Yes, just try to fix the date, if you can, from the 23rd.

A. And the date was made for the following day, which was, the best I remember, the day before Christmas, which would be the 24th, and I was to meet her at the Model Cafe at noon on that day, which I did.

Mr. McCutcheon: Just a minute. Are you going to ask a question or let him talk here the rest of the afternoon?

Mr. Arend: Well, he was still fixing the time.

Q. (By Mr. Arend): Now, what was said in that conversation?

A. Well, first she brought up the subject of some plyboard and celotex that she had asked Chuck Cors about, asked Chuck Cors if he would, could, give her a bill of sale for any plyboard or celotex that went into the apartment up there, and she told me that he told her that he couldn't do her any good on it; he didn't have any celotex or playboard

(Testimony of Andrew Jackson Hall.)

for sale and never had sold any and thereby couldn't give her any bill of sale for any plyboard that might have gone into that——

Mr. McCutcheon: Just a moment, is this part of the conversation you had with Mrs. Cutting? I would like to get this straight. [315]

A. Yes, this is the conversation that was going on. She was doing the talking at this time about the plyboard and material and celotex, and then she asked me if, she told me to, if any questions was asked me in regards to where they got the stove and refrigerator, just reply that I didn't know, and, well, I don't particularly remember any other incident, except she told me then, as I was fixing to leave, that just to remember if they got into any trouble about it, we would all go down together. In other words, she meant that——

Mr. Taylor (Interposing): We object to anything further on that as to what she meant.

The Court: Objection sustained. Tell what she said.

A. She said that we would all go down together; that we were all involved in the stove and refrigerator.

Q. Mr. Hall, have you, or, did you, during 1945, at any time, observe Mr. Cutting exert himself unduly physically other than in lifting the range that you testified to yesterday?

Mr. McCutcheon: Objected to as improper rebuttal, your Honor.

The Court: Objection overruled.

(Testimony of Andrew Jackson Hall.)

A. Well, on a number of instances, I have seen him tussling or wrestling with some of the boys there: Chuck Cors, I believe was one; Red Harvey, who was out there. I don't remember any other particular incident. I don't believe I remember any outstanding, anything outstanding about it. [316]

Mr. Arend: You may cross-examine.

Mr. Taylor: No questions.

Mr. Arend: That is all, Mr. Hall.

Mr. Arend: The government rests now, your Honor.

Mr. Taylor: Defendant rests.

The Court: How much time do you want to argue this case to the side? How much time does the defendant want?

Mr. Taylor: I believe we should have an hour, your Honor.

The Court: Is that satisfactory?

Mr. Arend: That is, yes, sir.

Mr. Taylor: That is satisfactory.

(Whereupon counsel for each party argued the case before the jury and the Court duly instructed them, no objections or exceptions being taken to the instructions. The clerk of court thereupon swore the bailiffs pursuant to statute.)

The Court: The jury may retire in the custody of the bailiffs.

(Whereupon the jury retired to consider its verdict. The jury returned its verdict in open court in the presence of defendant and his attorney of record and the district attorney.)

I, Muriel Anderson Lomen, of Fairbanks, Alaska, hereby certify:

That I am the official court reporter in the District Court for the Territory of Alaska, Fourth Division; that I attended the trial of the cause entitled, "United States of America v. Percy James Cutting, Defendant, No. 1268 Cr.," at Fairbanks, Alaska, on November 12, 13 and 14, 1946, and took down in shorthand the testimony given and proceedings had thereat; that I thereafter transcribed said shorthand, and the foregoing pages, numbered 1 to 317, inclusive, comprise a full, true, and correct statement and transcript of such testimony and proceedings.

Dated at Fairbanks, Alaska, this 18th day of January, 1947.

/s/ MURIEL ANDERSON LOMEN,
Court Reporter.

[Endorsed]: No. 11513. United States Circuit Court of Appeals for the Ninth Circuit. Percy James Cutting, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal From the District Court for the Territory of Alaska, Fourth Division.

Filed: September 25, 1947.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

Excerpt from Proceedings of Monday,
May 5, 1947.

Before: Mathews, Healy and Orr,
Circuit Judges.

No. 11513

PERCY J. CUTTING vs. U. S. A.

ORDER DENYING MOTION TO DISMISS,
AND EXTENDING TIME TO FILE TRAN-
SCRIPT OF RECORD.

Ordered motion of appellee to dismiss appeal for failure of appellant to prosecute such appeal submitted on papers filed in support of and opposition to said motion—Mr. Robert M. McMillan, Assistant United States Attorney, on behalf of counsel for appellee having been heard—and submitted to the court for consideration and decision.

Upon consideration thereof, further ordered said motion to dismiss the appeal herein be, and hereby is denied, and that the time to file the transcript of record on appeal herein be, and hereby is extended to July 5, 1947.

In the United States Circuit Court of Appeals,
Ninth Circuit at San Francisco, California

No. 11513 Undocketed

PERCY J. CUTTING,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

MOTION FOR AN ORDER EXTENDING TIME
TO FILE, RECORD AND DOCKET CAUSE

Comes now, Warren A. Taylor, the attorney for the above named appellant and moves this Honorable Court for an order extending the time for the appellant to file, record and docket this cause in appeal to the 5th day of September, 1947, upon the grounds that due to unforeseen circumstances, the appellant will be unable to file, record and docket the said appeal within the time prescribed by order of said Court, to-wit: the 5th day of July, 1947, and for the further reason that it would be inadvisable to require the Clerk of the Court for the Territory of Alaska, Fourth Division, to prepare and deliver said record on appeal within the time heretofore allowed.

This motion is based upon the affidavit of Warren A. Taylor, Attorney for the appellant, which is attached hereto and made a part hereof.

/s/ WARREN A. TAYLOR,
Attorney for the Appellant.

So Ordered:

/s/ FRANCIS A. GARRECHT,
Senior United States Circuit
Judge.

[Seal]

A true copy. Attest: June 23, 1947. Paul P.
O'Brien, Clerk.

United States of America,
Territory of Alaska—ss.

Warren A. Taylor, being first duly sworn upon his oath deposes and says: That he is the attorney for the appellant, Percy J. Cutting; that in the month of December, 1946, the appeal in the above entitled cause was allowed by the District Court, Territory of Alaska, Fourth Division, and that thereafter the court reporter for said Court was instructed to prepare the transcript of the testimony and proceedings in the said cause. That prior to the completion of the said transcript and proceedings affiant was required to go to California for medical and surgical treatment and that while in California underwent an operation and was advised by the doctors to remain in the States and rest and recuperate.

That the affiant did not return to Fairbanks, Alaska, until the first day of April, 1947, and upon

his return found that a large amount of business affairs required his attention and that other business coming into the office made it impossible for him to prepare the necessary papers to perfect the appeal. That thereafter on the 5th day of May, 1947, the above entitled Court extended the time to file, record and docket the appeal to the 5th day of July, 1947.

That since the said order by the Circuit Court of Appeals was made extending the said time as aforesaid, affiant has been engaged in a number of trials at Fairbanks, Alaska, and has been unable to prepare the necessary papers in time to file, record and docket the same in the said Court. That the affiant has also been ill for approximately two weeks and during that time was unable to attend to the business of his office.

Wherefore affiant requests that the time for preparing and delivering said record on appeal to the Circuit Court of Appeals, Ninth Circuit, be extended 60 days to the 5th day of September, 1947.

/s/ WARREN A. TAYLOR,

Subscribed and sworn to before me this 19th day of June, 1947.

[Seal] J. A. LATHANAN, JR.
Notary Public in and for the Territory of Alaska.

My Commission expires June 20, 1951.

[Endorsed]: Filed June 23, 1947.

[Title of Circuit Court of Appeals and Cause.]

MOTION FOR AN ORDER EXTENDING TIME
TO FILE, RECORD AND DOCKET CAUSE

Comes now, Warren A. Taylor, the attorney for the above-named appellant and moves this Honorable Court for an order extending the time for the appellant to file, record and docket this cause in appeal to the 5th day of October, 1947, upon the grounds that due to unforeseen circumstances the appellant will be unable to file, record and docket the said appeal within the time prescribed by order of said Court, to-wit: the 5th day of September, 1947, for the reason that the United States Attorney for the Fourth Division, Territory of Alaska, moved the District Court for the Fourth Division, Territory of Alaska, to strike the Bill of Exceptions and Assignment of Errors and certain items in the praecipe for the Transcript of Record, and that the said Court heard the arguments upon the said Motion and now has the same under advisement and has not rendered any decision in the said matter.

That the appellant believes and therefore avers that unless the decision is made by the said District Court within the next few days that it will be impossible to file, record and docket this cause in the time heretofore allowed by the Circuit Court of Appeals.

This motion is based upon the affidavit of Warren A. Taylor, attorney for the appellant which is attached hereto and made a part hereof.

/s/ WARREN A. TAYLOR,
Attorney for the Appellant.

So Ordered:

/s/ FRANCIS A. GARRECHT,
Senior United States Circuit
Judge.

United States of America,
Territory of Alaska—ss.

Warren A. Taylor, being first duly sworn, upon oath deposes and says:

That he is an attorney at law residing at Fairbanks, Alaska, and is one of the attorneys for the appellant in the above-entitled cause; That the Circuit Court of Appeals has heretofore rendered an Order extending time in which to file, record and docket the Appeal in the said cause, to the 5th day of September, 1947.

That the affiant has prepared all the necessary papers and documents on appeal and has served the Bill of Exceptions and the Assignment of Errors upon the United States Attorney, and that the United States Attorney has moved to strike the same from the files as not being in conformity with the rules of Criminal Procedure promulgated by the Supreme Court of the United States which rules are now applicable to the District Courts

for the Territory of Alaska. That the said matter has been argued before the District Court for the Territory of Alaska, Fourth Division. That the Judge of the said Court has taken the matter under advisement and that at the date of this affidavit has rendered no decision upon the same. That unless a decision is made within the next few days that affiant will be unable to file, record and docket the said cause within the time prescribed by the Order of the Circuit Court of Appeals. That if the motion of the United States Attorney is granted by the said District Judge that affiant will require thirty (30) days additional time in which to make the necessary corrections in the matter on appeal.

Wherefore affiant prays that the appellant be granted until the 5th day of October, 1947, in which to file, record and docket the said appeal in the Circuit Court of Appeals for the Ninth Circuit at San Francisco.

/s/ WARREN A. TAYLOR,

Subscribed and sworn to before me this 26th day of August, 1947.

[Seal] /s/ J. A. LATHANAN, JR.,
Notary Public in and for the Territory of Alaska.
My Commission expires May 20, 1951.

[Endorsed]: Filed Aug. 28, 1947.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION TO FILE AMENDED
STATEMENT OF POINTS

It is hereby stipulated by and between Harry O. Arend, United States Attorney, and Warren A. Taylor, attorney for the Defendant, Percy James Cutting, that the Statement of Points heretofore filed in the above-entitled court may be withdrawn and that the Statement of Points filed in the District Court for the Territory of Alaska, Fourth Division, on the 14th day of November, 1947, be substituted therefor.

It is further stipulated that the designation of the portions of the record to be printed heretofore filed in the said District Court be withdrawn and that the entire transcript of the proceedings be printed in lieu thereof.

Dated at Fairbanks, Alaska, this 17th day of November, 1947.

/s/ HARRY O. AREND,
United States Attorney.

/s/ WARREN A. TAYLOR,
Attorney for Defendant.

So Ordered:

/s/ FRANCIS A. GARRECHT,
Senior United States Circuit
Judge.

[Endorsed]: Filed Nov. 22, 1947.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS

Comes now the above-named Defendant and alleges that the Judgment and Commitment of the above-entitled Court made and entered in the above-entitled cause on the 11th day of December, 1946, is erroneous and unjust to him and should be reversed, and he filed the following Statement of Points upon which he will rely, to-wit:

1. That the Court erred in the overruling Defendant's motion to dismiss count I and II in the indictment for the reason that the allegations therein contained do not constitute a cause of action against the Defendant.

2. That the Court erred in admitting in evidence Plaintiff's Exhibit A over Defendant's objection.

3. That the Court erred in overruling Defendant's motion for direct verdict of "not guilty" made at the conclusion of Plaintiff's case in chief upon the grounds that there had been no evidence of ownership of the range in question, and also upon the grounds that the testimony offered by the Plaintiff has shown that the Defendant was lawfully in possession of the said range. (Pl. Ex. E.)

4. The Court erred in overruling Defendant's objection to the admission of Plaintiff's Exhibit E (electric range) in evidence.

5. That the Court erred in admitting in evidence Plaintiff's exhibit A, unsigned memorandum receipt.

6. That the verdict is contrary to the evidence:

(a) That there is no evidence that the Plaintiff's exhibit E was property of the United States Government.

(b) That there is no evidence of the taking by the defendant except that of accomplices whose testimony was uncorroborated and whose testimony should be viewed with suspicion.

(c) Testimony of Audrey Cutting and Sylvia Henderson regarding purchase of range, Plaintiff's exhibit E, and Defendant's exhibits 2 and 3 bearing signature of M. W. O'Neil.

7. The Court erred in admitting in evidence Plaintiff's exhibit 2 upon the grounds that the constitutional rights of the Defendant have been violated by the taking of the exhibit by officers of the Federal Bureau of Investigation without a search warrant.

8. That the Court erred in overruling Defendant's motion for a new trial.

9. That the Court erred in rendering and entering judgment and commitment against said Defendant, Percy James Cutting.

Wherefore, Defendant prays that said Judgment and Commitment be set aside and be vacated in the furtherance of justice and in accordance with law.

/s/ WARREN A. TAYLOR,
Attorney for the Defendant.

Due service of the foregoing Statement of Points, and receipt of a copy thereof, acknowledged this 14th day of November, 1947.

/s/ HARRY O. OREND,
United States Attorney.

[Endorsed]: Filed Nov. 22, 1947.

